

Vol
A
COLLECTION
L. of Hargrave
OF
CURIOUS DISCOURSES

WRITTEN BY
EMINENT ANTIQUARIES
UPON SEVERAL HEADS IN OUR
ENGLISH ANTIQUITIES.

TOGETHER WITH
MR. THOMAS HEARNE'S PREFACE AND APPENDIX
TO THE FORMER EDITION.

A rectangular stamp from the British Museum, oriented vertically. The text 'BRITISH MUSEUM' is visible, along with some handwritten numbers and dates. The stamp is partially obscured by the text 'TO WHICH ARE ADDED'.

TO WHICH ARE ADDED

A GREAT NUMBER OF ANTIQUARY DISCOURSES WRITTEN
BY THE SAME AUTHORS.

MOST OF THEM NOW FIRST PUBLISHED FROM THE
ORIGINAL MANUSCRIPTS.

VOL. II.

L O N D O N:
PRINTED BY AND FOR W. AND J. RICHARDSON.
M. DCC. LX XI.

COLLECTION

OF

CURIOUS DISCOVERIES

WRITTEN BY

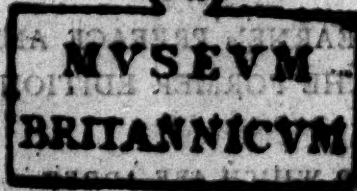
EMINENT ANTIQUARIES

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TO THE SECOND EDITION.



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MANCHESTER.

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A

COLLECTION

OF

CURIOUS DISCOURSES.

N^o I.

The Antiquity, Authority, and Succcession of
the High Steward of England.

By Sir ROBERT COTTON, Bart.

- FOR the clearing of this subject we will treat,
- I. Of the name.
 - II. Of the two principall species or kinds.
 - III. Of the antiquity.
 - IV. Of the jurisdiction or authority.
 - V. Of the preheminance or dignity.
 - VI. Of the compensation or allowance of the high stewardship of England, being the first of the two principall species.

The English name STEWARD, quasi STEDWARD, consisteth of two Saxon words STED or STITH signifying a house, and WARD a guardian, guide, or gouvernour, which though not in sound, yet in sense wholly agreeth with the Greeke name Οικονομος, and likewise with the French and High Dutch Names. The vulgar Latine name *Seneschallus*, Tillius deriueth of *schall* a seruant or minister, and *chesind* familia; so that *seneschall*, or rather *chesindschall*, with him

VOL. II. A

A

is

1.
The name.

Antiquity, Authority, and Succession

is as much as to say a *minister of the family*, a derivation altogether hard and uncouth. Lupanus guesseth it from *sen*, whereby he would signify *justice*, and *schalk*, *præfectus*, as if he would say the *principall magistrate for the ordering of justice*. The diuersity of names this office hath put on, are as many as the diuerse duties of all the seuerall stewards. Hottoman sayeth, that *maior domus*, *magister hospitij*, *prouisor aula*, *comes domus regia*, *præfectus aula*, *comes palatij*, *magister palatij*, & *præfectus pratorio* [which names betoken the highest dignities that can befall a subject either in court or kingdome] are all one *seneschallus*. Tillius sayth, that in France *comes palatij* vnder the two first families of the Merovingians and Carolovingians, changed to *seneschallus* vnder the third. *Princeps*, *præpositus*, & *seneschallus*, John Platina vseth as words of one signification. The Easterne Empire called their steward *europalates* or *curator palatij*; the High Germans *Hansehoffmaster*; and the French *maistre d'hostell* and *seneschall*. Thus much of the name.

2.
The two
principall
kinds of
steward.

The two principall species or kinds are the *grand regall office of high steward of England*, and the *oeconomicall office of steward of the kings household*. The one being a cheife officer ouer the whole state, and the other a principall commander in court. The first immediately and vniuersally representing the power and person of the king, the second in a degree inferiour, and that onely within the veirge of the court, the iurisdiction of the first surmounting the greatest peeres; but the authority of the other restrayned onely to officers of the veirge and household.

3.
Antiquity.

Belin
steward to
Cassibelan.
Houelin
high
steward to
king Ed-
ward the
Confessor.

Now for the antiquity. There is no doubt but these offices at the first, as all other, sprang from the ease of the prince's duty; for soe Cassiodore sayth of this very dignity, that it was *ex diuersis titulis deflorata ad leuamen principis*. Geffrey of Monmouth deriueth it as high as from the Brittish King Cassibelan, to whom [he sayth] Belin was steward, and vnder him master of justice; for soe an English translation very aunciently written hath it. Also Edward the Confessor had a steward called Houelin, as appeareth out of his charter for the keeping of Waltham forest,

rest, beginning thus: Ich, Edward, King, &c. witnesse bishop Wolston and Clerkes ycleped many one,

And Sweyn of Essex our brother,
And taken him many other,
And our steward Houelin,
That besought me for him.

But however this inferiour and household office of steward may descend from the Britons and Saxons, yet the learnedst of our antiquaries hold, that the grand office of high steward came from the Normans to vs, and from the French to them. Nor was it then an office momentary or extraordinary as now, but hereditary from father to child. For it appears out of our English story, that among many worthy persons that came in with the Conquerour one Sir Hugh of Grantmesnil [alias Grentemaisnell] a Norman of noble descent, soe valiantly behaved himselfe, as the king rewarded him, not onely with great store of lands and mannours in the shires of Gloucester, Northampton, Leycester, Nottingham, and Suffolk, but also richly married him to one Adeliza, a great inheritrix of a noble family, and at the solemnization thereof, gaue him the office of lord high steward of England. By this Adeliza he had two daughters, Petronilla or Pernell the eldest, and Adeliza the second, who married Roger Bigod a Norman. All the inheritance of the sayd Sir Hugh Grentemaisnell was diuided betwixt those two daughters, sauing that in the partition, the lordship of Hinkley, and office of high steward of England fell to Pernell, because she was eldest. This Pernell married to Robert oue les blanches maines, or Robert with the white hands, the sonne of Robert Le Bossu, earle of Leycester, &c. Soe that this Robert was the first of the house of Leycester, in whom this office tooke roote. Hee was a man valiant, he accompanied Richard in the Palestine wars, and in the yeare 1190 was slain before Acon. He had yssue the famous warrior Robert Fitz Pernell [so called of his mother's name] who was also lord steward of England. He followed his father's steps, and was taken prisoner with king Richard. But

High
Stewardship
of old hereditary.
Lib. Domesday.
Sir Hugh of
Griantmesnell the
first high
steward after the
Conquest.

Robert
with the
white hands
second
steward,
first of the
house of
Leycester.

Robert
Fitz Pernell
third
steward.

Antiquity, Authority, and Succession

Simon de
Mountfort
fourth high
steward.

Simon de
Mountfort
fifth high
steward of
England.

High
Stewardship
of England
transferred
from the
house of
Leycester
to the dukes
of Lan-
caster.

Lord high
steward as-
sisted in the
perfor-
mance of
his place.

dying without yssue, all his inheritance befel to his two sisters, Amicia the elder and Margaret the younger, which married to Saher de Quincy earle of Winchester. The elder had the office of high steward, because it was not partible, which was executed by Simon de Mountfort her husband; which Simon atteyning the sayd office jure Vxoris, lost boeth honour, land, and officē for his disobedience to king John; he was banished, and afterward slaine before Tholosa. His lands were given to Randolfe earle of Chester; but the king reteyned in his owne hands the Stewardship, as annexed to the crowne by forfeiture. But notwithstanding this error of the father, his sonne Simon de Mountfort by his valour and worthy feates of warr soe gayned the favour of his soveraigne king Henry the third, and the loue of the king's sister, as he obteyned her for his wife, and for augmentation of honour vnto him he was restored to the dignity of the earldome of Leycester, and high stewardship of England. But such was the disaster of this man, that the new begunn variance betwixt king Henry the third and his nobles, for not obseruing the new decrees att Oxford, being chosen captaine for the nobility, he tooke the king prisoner; but his sonn the prince escaping renewed the warr, and slew this Simon at the battell of Euesham, Anno 1263, 48 Henry 3rd. Soe that though he had yssue Simon, Guy, and other sonnns, yet they neuer enjoyed this office of stewardship, nor earldom of Leycester, which after was giuen [as I take it] to Edmund earle of Lancaster, and soe remayned in that house till it was incorporated in the crowne in king Henry the fourth. In the Reigne of king Richard the second, John duke of Lancaster was high steward, boeth at the king's coronation, and also att the arraignment of Richard earle of Arundell. At the coronation of king Henry the fourth the king gaue in the right of the earldome of Leycester, the office of high steward of England vnto his second sonn Thomas duke of Clarence; and by reason of his tender age he was assisted by Thomas Percy earle of Worcester, and sate as lord high steward in the White Hall of the palace at Westminster, and caused inquiry to be made what offices were to be exercised

of the High Steward of England.

5

exercised by any manner of person on the day of the king's coronation. King Henry the seventh granted his commission to two, or three, to execute the place of high steward boeth att his owne, and his queenes coronation. The statute anno 31^o Hen. 8th, which hath sett downe the placing of great officers, doeth make noe mention of the high steward; which is a plaine argument, that this office was quite worne out of ordinary, and hereditary use long before his tyme. Thus for the antiquity.

As touching the jurisdiction and authority in tymes past, there was wont to ride in circuite throughout Normandy, a certaine justicer, who was called the *princes seneschall*, or *Steward*; and what pertained to his office may best appear in the old customary book of the dutchy of Normandy: and I doubt not, but it will bee agreed, that whatsoeuer belonged to that office, must needs also be attributed vnto this, the very same office hauing been planted and executed here in England. For in the Red, and Blacke-bookes of the exchequer, Robert with the white hands before-mentioned [*è contra*] by virtue of his office of High Steward was termed *capitalis iusticia*, and *primus presidens in Anglia*. But among many branches of the High Stewards authority we will specify these few.

His office is vnder, and immediately after the king, to ouersee, and gouerne the whole kingdome, and all the officers of justice, boeth in peace and warre.

If any complaynt be made either to judges, or to the king, and the complaynant be not able in due season to obteyne remedye, he is bound to receaue their complaynts, and keepe their petitions till the next parliament, and to call judges to account, that delay, or deny justice.

If the king haue euill counsellours, or such as be hatefull to the people, he is to aduise him thereof, and to use his best endeavour for their remoue: as it happened to Godwyn, earle of Kent, in the tyme of Edward the Confessour: to Hubert de Burg, earle of Kent, in the reign of king Henry the third: the like to Pierce Gaveston, in the days of Edward the second: yea, their authority stretcheth to a

4-
Authority.

The old
customary
booke of the
dutchy of
Normandy.

1.

Gouern-
ment of the
kingdome,
and all of-
ficers vnder
the king.

2.

Receauing
petitions,
and calling
corrupt
judges to
account.

3.

Remouing
of euill
counsellors
from the
king.

farr larger size then this, as it appeareth plainly in an auncient manuscript discourse, intituled, *hic annotatur, quis sit senescallus Angliæ, & quid ejus officium*, being in the hands of some antiquaries.

4.

Limitation
of towns,
and vil-
lages, and
appointing
of high-
ways.

It belongeth to his office, to limitt and bound townes, and villages, and to cause streets, pathes, and high-ways to be set in their auncient places, and those which be stopped, to be opened.

5.

Disposing
of claymes
at the
coronation.

After the death of the prince, he keepeth court in the king's hall judiciall, to receaue petitions of such of the nobility, and others, as by reason of their tenures, clayme to doe seruice at the king's coronation. As did John duke of Lancaster, earle of Leycester, and high seneschall of England, att the coronation of king Richard the second, and Thomas Percy, earle of Worcester, att the coronation of king Henry the fourth, being substitute to Thomas the king's sonn, as is aforesayd.

6.

Command-
ing of
Money to
be payd for
the king's
seruice.

It is also euident out of the Red, and Blacke-bookes of the exchequer, that he might command money to be payd for the king's seruice att his pleasure. And he might also make his own writ, &c. and no maruell, for he had the principall command in the exchequer, and sat as judge, and president there.

7.

Authority
of summon-
ing att the
arraign-
ment of a
peere, and
of giuing
sentence.

Also upon the arraignment and tryal of any peer of the realme in cases of treason, or felony, he first directeth forth a precept to the justices, before whom the indictment is taken, willing them to certify the same indictment at a day and place by him assigned, and doeth likewise direct another precept to one of the sergeants at arms for the summonition of the peeres against the day of tryall. The like precept doeth he also send to the constable, or lieutenant of the Tower, to bring forth the peere being prisoner the same day. Lastly, he hath power to pronounce sentence of death against the peere, being found guilty. Yea, his authority in this kind hath bin soe absolute, that John duke of Lancaster, high steward of England before-men- tioned, in the tyme of king Richard the second, gaue sen- tence, and judgment against Richard earle of Arundell,

John duke
of Lancaster
high stew-
ard gaue
sentence in
the presence
of the king.

even

even in the presence of the king; his words were these, *Richard, I John, Steward of England, judge thee, to be a traitour, and I condemne thee, to be drawne, hanged, beheaded, and quartered*: but the king for reuerence of his blood, commanded him to bee beheaded. But sithence the tyme of Henry the fourth, this office hath been extinct in the crowne, being reuiued onely by patent under the broad seale, att extraordinary tymes of the princes funerall, coronation, feasts, parliaments, or at the arraignment of a peere, being bounded within very streight limits of tyme, & pro illa vice tantum.

High
Stewardship
from
Henry the
fourth ex-
tinct in the
crowne.

Now if his jurisdiction and authority be of such high and princely moment, how can the pre-eminence, and dignity of his place but be answerable? soe highly was this office honoured in France, that the steward was chosen by one and the same kind of election with the king; namely, by the suffrages, or voyces of the people: for *Franci* [sayth an auncient writer] *regem hildericum super se leuant, majorem domus Vulfricum*; yea, it grew to that excessive height, that Hottoman sayth of the stewards of France, att and before the tyme of Pipin, *cum regiam potestatem aliquamdiu obse- discent, tandem pro sua occupauerunt*. Eginhardus sayth of the successeur to Pipin the great, *inane regis vocabulum, quia solo nomine regnabant*. But it may be rightly objected, that this pre-heminence soe unbounded and matchless, was meerey usurped, and not to bee tollerated in a state Monarchicall: let vs see therefore, of right, what dignity he ought to haue. Out of the Red and Black-bookes of the exchequer soe often mentioned, it plainely appeareth of our second Steward Robert with the white hands, *quod per uniuersum regnum presidentis officium obtinuit*: and in another place, that he was *Primus post Regem in regno*: and it is sayd of him in a third place, *Magnus est hic, cuius fidei totius regni cura, imo & cor regis committitur*. Also his dignity may well be conjectured out of the seuerall names in the first part of this discourse. But they that speake most modestly of it, as John Platina, say, that he is to be stiled *specabilis*, a title farr aboue *honorabilis*, and that

5.
Dignity.

High
Steward,
president
ouer the
whole
kingdome.
Second to
the king.
To whom
the care of
the king-
dome, and
the kings
heart is
committed.

he had of old an equall place *cum comite Egypti*, being, as I take it, all one with a proprætor, or viceroy. *Officium ejus* [sayth Cassiodore] *tanta genij prærogativa decoratur, ut militia perfunctus muneribus, ornatur nomine principatus.* His place is before the constable, in the stile of Thomas of Lancaster, great seneschallus of England, and constable of the king's army. Hitherto of his dignity.

6.
Allowance.

Now as touching his compensation and allowance, boeth for his fee, and his entertainments in household, though I can yet hunt out noe certainty, yet I may thus conjecturally roue att it: that to the highest authority and dignity belongeth the largest fee, and the most magnificent, and princely entertainment. Aymonius sayth, that in France the *major domus* had allowed him in court *duodecim vassallos*, twelve servants, to attend vpon him. And if the allowance of the steward of the household be soe large, as we will forthwith declare; then by that wee may guess, how much more ample the fee, and provision of the lord high steward ought to be: sufficeth thus much concerning. 1, the name of steward in general. 2, the two principall species thereof. 3, as likewise the antiquity. 4, authority. 5, dignity. 6, the allowance of the lord high steward.

It now resteth, that we examine more particularly the nature of the second species, namely the steward of the king's household: which office, because it was neuer hereditary as the former, but onely *ad libitum regis*, we will not greatly search into the antiquity, but onely into the jurisdiction, and allowance thereof.

For illustration whereof, it may most fitly be compared, and resembled to the magisterij dignitas in France described by Cassiodore. *Ad eam* [sayth he] *pertinet Palatii disciplina.* By him that beares this office, *ordines sine confusione componuntur.* He is *dominator aulici consistorij*; *causarum maximum pondus, in ejus audientie finibus reponitur*; *per eum legatorum pronuntiantur adventus*; *per aquatores victualium curæ in urbe regia propria voluntate constituit.* And so this accordeth in part *magister hospitij*, by Guernius Piso, whose authority concernit principaliter administrationem hospitii,

hospitij regij, et sub ejus cognitione, & punitioe sunt omnes officarij ipsius regis. And Hincmarus sayth of the seneschall in the court of Charles the great; *ad omnia respicit in aula regis.* All these doe exactly point out the *seneschallus hospitij regij*, as Fleta hath it. For [sayth he] *potestatem habet in omnes injurias, in omnesque actiones criminales, & personales, plenam justitiam exhibere, &c.* The mareschall is as his sheriffe, to attach any one, *de quo fit questio, aut clamor, dum tamen intra metas hospitij.* He is as the cheife justice in the kings progress, and may direct or make out a warrant to the sheriffe, in whose county the king will be commorant, to summon all parties to tryall, so long as the king is there resident. And those, which cannot be determined, he may adjourne *de die in diem, vel in bancum, vel in primas affizas, &c.* and this he may doe in a priuate liberty, because his authority is deriued from the king's prerorative: and that in the kingdome of another prince, as appeareth by a case anno 14^o *Edwardi primi.* For one arraigned of felony before the castellan of Paris, where the king of England then held his court, was notwithstanding by the French king's counsell deliuered to the king of England's steward, to be tryed in his court, where accordingly judgement, and after, execution was made of the party. This steward hath power to proceed to outlawry, and *duella injungendi, &c.* It seemeth, they kept of old certaine rolls, called *placita aulæ regis*; the view of them would giue light to this argument in hand. But of all bookes, and records, tending to this scope, there is none more pregnant and plaine, then the old booke of record, called *Domus regis Angliæ*, preserved in the counting-house of the household: out of which, as likewise out of diuers aun-cient records it is euident.

First, that the steward of the king's household receaues his charge of the king's high, and proper person, and the household staffe in these words; *seneschall, tenez le baston de nostre Maison.* By which forthwith he is also steward of the marshalsea, that is the court of the house-

The mareschall the-
riffe to the
lord
steward of
the house-
hold.
Lord
steward of
the house-
hold, lord
chiefe jus-
tice in the
king's pro-
gress.

He hath
power to
proceed to
outlawry,
and injoyne
combatt.

The old
booke in
the count-
ing-house,
called *Do-
mus regis
Angliæ.*

I.

The man-
ner of the
lord stew-
ard's crea-
tion.

Treasurer, comptroller, cofferer, &c. onely as recorders, and witnesses, himselfe sole judge.

2.

Noe charge to any officer in court without his notice.

3.

He may annull the customes of the household.

4.

Authority to assigne Warrant for wine.

5.

His correspondence with the Staple.

6.

7.

8.

hold, of which he is a judge of life, and limb. And the treasurer, comptroller, cofferer, two clerkes of the greene-cloth sitt at the board of doome, or greene-cloth, with him in the counting-houfe, but as recorders, and witnesses of the trueth, himselfe being as judge, commander, and guyder of the whole household.

Noe commandment, or charge, ought to be giuen to any officer in court without his notice, and assent first had, and in the household rules and judgements, he representeth the king's Estate, and his staffe is taken as for a commission.

He may adnull some customes of the household [*saluis pro honore, & proficua regis*] by aduice taken att the greene-cloth counting-board.

This steward representeth the state of an earle. And by the statute of 25 E. 3. cap. 4. in respect of diuers abuses committed by the king's butlers, and takers of his wine, it was then enacted, that the steward, or treasurer of the household should assigne warrant for wine for the king's household.

And by the statute of 27 E. 3. cap. 8. If any plea happen touching matters of the staple, and concerne any of the household, the steward, or his lieutenant, and the marshall of the household shall be with the mayor of the staple, to see that right be done, &c.

Anno 3 Hen. 7. cap. 13. The compassing the death of any counsellour of estate, steward, treasurer, or comptroller of the household, is made felony, and judgment to be giuen, and execution done accordingly, and there is layd downe the manner of proceeding, to impannel a jury of the king's seruants in checque roll, &c.

Another statute was made, 15 Hen. 6. touching pleas to bee holden before the steward of the household; but nothing else touching the authority.

The seale of this office in Edward the third's tyme, Ralfe de Stafford being then lord steward, was a cheueron in a plaine feilde, with two Lyons supporters, and ouer the scutcheon a lyon passant gardant with this circumscription: *sigillum officij seneschalli, &c.* It is euident out of old deedes

deedes and records, that in the first yeare of Edward the 3d. John de Roos was seneschall of the household. Also anno 18 Edward 3. Ralfe de Stafford before-mentioned; and anno 25 Edward 3. John Gray de Rotherfeild bare the same office. Item, anno 9 Richard 2. John Montecute was *seneschallus hospitij*. Likewise 23 Henry 8. Charles Brandon duke of Suffolke taking this place vpon him, was by act of parliament called by a new stile; *Grand maistre del hostell du roy*. Butafterward anno 1 Mariæ it was bestowed vpon the earle of Arundell, and restored to the former denomination. And in her late majesty's tyme lord William earle of Penbrooke commanded in the same place. Hitherto, though in confused and imperfect order we haue spoken of the authority, dignity, and antiquity of the lord seneschall or steward of the king's household. It now resteth, that we should breifely speake of his allowance.

I have heard also, that the earle of Leycester had the same office.

Of auntient tyme therefore he had daily in the hall eating, a chaplaine, two esquires, foure yeomen, and in chamber daily for his breakefast meate, and liuery for all night, eight loaues, foure messe of great meate, two rewards of roast, two pitchers of wine, six gallons of ale, and from Alhallowntide to Easter, one torch to attend upon himselfe, one tortois to fetch his liuery by, three perches of waxe, six candles of waxe, eight candles of tallow, foure faggots, litter, and rushes all the yeare of the serjeant vsuer of the hall and chamber. And after winter season four shides, and two faggots. And when him listeth to haue more largely in any thing, then his chamberlaine, that doeth fetch and receaue it, must record thereof by tally or bill in the counting-house. Also he hath out of the counting-house for his fee at Easter and Michaelmas twenty markes, and for his robes sixteene markes, and for his napery att the foure annuall feasts three pieces of great linen cloth out of the great spicery, or else in money thirteene pounds one shilling and foure pence.

Black-book of the household.

To conclude, foe vnsupportable grew the ambition, and the authority so vnlimited of the lords high stewards in the former tymes, that his majesty's predecessours in this kingdome haue bin constrayned to extinguish theinheritable right

and ordinary execution of their office, and wholly to incorporate the same into their royall crowne and soueraigne prerogative, communicating it onely to the subjects for very short space, either in cases of greatest necessity, or in tymes of highest solemnity.

Nº II.

Of the same.

By ANONYMOUS.

THIS question is soe large, that it must either procure infinite payne or obscurity in the obseruer, and leaue the hearer to his best vnsatisfied. For it conteyneth beside the high steward or *seneschallus hospitij*, all other the vnder offices of that name, which generallity maketh the antiquity as vncertaine as the diuersity, and boeth more then the etymology, I meane the Latine, as for the English, I take it from sted, or stitts, and ward, the howgard. Of the office I fynd a double deriuation. One by Tilius from the old German word *schall*, which is seruant or minister, and *gesind familia*, *gelinschall*, the minister of the family; but this is hard either in sense or sound. Lupanus guesfeth it from *sen*, whereby he would signify justice, and *scalcum praefectus*, this seemeth nearer to boeth, if he be able to proue his first word. The diuersity of names this office hath put on, are as many as the diuerse duties of all the seuerall stewards; for in some part they will one sute the other. Hottoman sayth, that *major domus*, *magister hospitij*, *prouisor aulae*, *comes palatij*, & *praefectus pratorio* are the same with *seneschallus*, though senerally enlarged and restrayned to the affections of tymes and masters. I should take *magisteriae dignitas* in Cassiodore to be more neare to our steward then any of these: yet Tilius sayth, that *comes palatij* vnder the two first families changed to *seneschallus* vnder the third. *Princeps praepositus* & *seneschallus*, *Johannes Platina* useth as synonymas;

synonimas; and soe farr as *seneschallus* hath *munus subministrandi dapes*, he is *Architriclinius* with Lancelot. The easterne emperours called the steward *curopalates* or *curator palatij*; the High Germans *hansehoffmaster*, and the French *maistre del hostell*, and *seneschall*. Thus much for the name. Of the office I would have used some order in the question, but the functions are soe intermingled, that itt will scarce glue leaue. There is noe doubt but these offices conteyned in our question, as all other, sprang from ease of the prince's duty; for soe sayth Cassiodore of *magisteria dignitas, ex diuersis titulis desolata ad leuamen principis*. But in France it ineroached to such a pitch, that [as Hottoman sayth] *cum regiam potestatem aliquamdiu obsedissent, tandem pro sua occupauerunt*, leauing onely the king, *ut chartæ & priuilegia regis nomine scriberentur*; but *cetera regni negotia maior domus administrabat*, sayth Aymonius; and therefore Eginhartus sayth of the successour of Pipin the Great, *suaue regis vocabulum, quia solo nomine regnabant*. The feare of the like may be some cause, that our kings haue deuested this state from the continuall practice of such an officer, afterwards beleauing it enough to make that but by commission at pleasure, and that onely for seruice of state, as coronations, funeralls, feasts, and parliaments, and for justice in tryall of any peere in question of treason or felony.

This office the queene's courts had as well as the kings; for *Gregorius Turonensis* nameth *Waddonem maiorem domus in aula reginae Raguntha*.

And in these tymes he was chosen, as well as the king, by the suffrage of the people; for *Franci Hildericum super se levant maiorem domus vulfridum*. But it fell after there to be hæreditary; for soe had *comes andium officium magni seneschalli, aut magistri Francici hæreditarium*. The *magisteria dignitas* by Cassiodore described, hath of any the auncient offices most part with ours; for *ad eum* [sayth the author] *pertinent palatij disciplina*; by him *ordines sine confusione componuntur*; hee is *dominus aulici consistorij*; *causarum maximum pondus in ejus audientia finibus reponitur*; *per eum legatorum pronuntiatur aduentus*; *pæquatores victualium*

lium rerum in urbe regia propria voluntate constituit. And to this accordeth in part *magister hospitij* by Guerimus Pilo, whose authority *concernit principaliter administrationem hospitij regis, & sub ejus cognitione, & punitione sunt omnes officarij ipsius regis.* And Hincmarus sayth, that the seneschall in the court of Charles the Great [which is the first tyme I find the word] who besides *potus & victus cabalorum* [which was the reguard of the *butichlarius, & comes stabuli*] *ad omnia respicit in aula regis.* All these doe exactly point out the *seneschallus hospitii regis*, as Fleta doeth deliuer it; for *potesstatem habet, ad omnes injurias omnesque actiones criminales, & personales, plenam justitiam exhibere, &c.*

The mareschal is, as his sheriffe, to attache *de quo fit questio, vel clamor dum tamen inter metas hospitij.* He is as the chiefe justice in the king's progress, and may direct out warrant to the sheriffe, in whose county the king will be commorant, to summon all partyes to try all soe long as the king is there resident, and those which cannot then be determined he may adjourne *de die in diem, vel in Bancum, vel in primas assisas, &c.* And this he may doe in any liberty priuate, because his authority is deriued from the king's prerogative; and that in the kingdome of another prince, as appeareth by a case, 14 E. 1. where one arraigned for felony before the Castellane of Paris, where the king of England then held his court, was notwithstanding by the French king's counsell deliuered to the king of England's steward, to be tryed in his court, where judgment, and after execution was made to the party. The steward hath power to proceed to outlawry, and *duella injungendi*, and of any tryall, that the itinerant justices may; but *de libero tenemento se intro-mittendo non debet sine breue.* It seemeth they kept of old certaine rolls called *placita aula pro rege*, the view of them would giue light to this question. And thus far for his jurisdiction, for his state soe much, he wayteth with the lord chamberlaine att the christening of the king's children.

of the High Steward of England.

N^o. III.

Of the fame.

By Mr. TOWNSHEND.

Junii 1663, anno 1^o. Jacobi apud Derby.

THIS question, although *prima facie* it seemeth to bee a question too generall, yet notwithstanding I am induced in respect of the late questions had touching great offices, to thinke, that it is not meant of particular petty stewardships of vnder-courts, or the like; and therefore I will be bold [notwithstanding any statute] to enclose this large common, and bring into it two pastures, and to diuide the generall question into the grand regall office of high steward of England, and into that oeconomical office of steward of the king's household; the one being a cheife officer of state, the other a principall commander of household, and boeth being the naturall subjects; as I conceane the question of the antiquity, and office of steward of England.

I will not trouble you with etymologick exposition, or the originall of the word *seneschall*, but leaue that to the curious, and studious linguists. And because it is reason, that the best should haue best place, I will first ranke the cheife stewardship of England with his appendixes, and soe the stewardship of the household, to march after in like order. And first of the originall of the office of high steward, and of the inheritance, and other matters, which are *tanquam accidentia inseparabilia* to the office, and yet not of the essence, I meane, for execution of the office.

The office synce the conquest hath long continued by descent inhæritably in the family of the auncient earles of Leycester, and soe remayned, vntil it was translated to the house of Lancaster, after the death of Simon de Mountford; and by king Henry 4, of that house, when he obteyned the crowne, incorporated. For playner manifestation whereof it will serue well to the purpose, before the office itself be described, to shew the first institution thereof, and

and to recount in order the succession of the officers, whilst it passed inheritably.

I thinke it will not be denyed, that before the conquest this office was not heard off in England, and therefore, *hoc posito*, it is plaine in our English chronicles, that when the conquerour came into this land, and with him many worthy personages, amonge the rest [though not inferiour to the rest] one sir Hugh of Grentmeisnell came with him, who was younger sonn to Robert of Grentmeisnell, a nobleman of Normandy. This Sir Hugh, in the English enterprises foe valorously behaved himselfe, that the conquerour being once quietly possessed of the kingdome, did very richly and honourably reward him for his former services, not onely with the mannours of Pebewath, Mareston, Quineton, Weston, and Willcott, in Gloucestershire, but with diuers lands in Norfolk, Leycestershire, Nottinghamshire, and Suffolk, and married him to a great inhæritrix of noble family here in England, and at the solemnization thereof, gaue him the office [neuer heard of here before] of lord high steward of England. The said Sir Hugh, and Adaliza his wife had yssue, Petronilla, or Pernell, the first daughter, and Adaliza, or Alice, the second daughter, who was married to Roger Bigod, a Norman, who had yssue, Hugh Bigod, first earle of the East-Angles, of whom the Bigods, earles of Norffolk were descended. All the inheritance of the sayd Sir Hugh Grentmeisnell was diuided betwixt those two daughters, sauing that in the particular, the lordship of Hinkley, and office of high stewardship of England fell to Pernell, being the eldest daughter, more than the younger had. The sayd Pernell marryed Robert oue les blanches maines, or Robert with the white hands, the sonn of Robert le Bossu, earle of Leycester, sonn of Robert of Beaumont, lord of Pont Adomare, and earle of Mellent, in Normandy, and brother to Sir Henry of Newburgh. The sayd Robert with the white hands was the first of the house of Leycester in whom this office of stewardship tooke roote. He was a man valiant, a companion to Richard the first in all his Palestine wars, and at last slayne before

before Acon, in the yeare of Christ 1190, anno 2 R. 1. He had yssue the famous warriour Robert Fitz-Pernell [soe called of his mother's name] who was also lord steward of England, he likewise following his father's steps, followed king Richard the first into the Holy Land, and in his returne home with the king was taken prisoner with him, and for his ransome payd 2000 marks, for which he was constrayned to sell his castle of Passy in Normandy, and dyed anno 1204, anno 6. Johannis, and buried att the abbey of Preux near Leycester. He hauing noe yssue all his inheritance descended to his two sisters, Amicia the elder, and Margaret the younger, marryed to Saher de Quincy earle of Winchester. But the elder had the office of high steward, because it was not partible, which was executed by Simon de Montford her husband, brother to Almarick, earle of Eureux in Normandy, which Symon hauing the sayd office *jure uxoris*, lost boeth honour, land, and office for his disobedience to king John, and was banished the land. His lands were giuen to Randolph, earle of Chester; the stewardship the king reteyned in his owne hands, as annexed to his crowne by forfeiture: he being banished, was slaine in the quarrel of the pope against the Albigenes before Tholosa, in the year 1219, anno 4 H. 3. But notwithstanding this errour of the father, his sonn Simon de Montford by his valiancy, and worthy feates of warr, soe obteyned the loue of his soueraigne king Henry the third, and the king's sister, that he obteyned the king's favour, and her for his wife, and for augmentation of honour vnto him was restored vnto the dignity of the earldome of Leycester, and stewardship of England. But such was the disastrous fortune of this man, that in the new begunn variance betwixt king H. 3. and his nobles, for not obseruing the new decrees att Oxford, being chosen captaine, for the nobility he tooke the king prisoner; but the prince his sonn escaping, renewed the warre, and slew this Simon anno 1263, 48 H. 3. soe that though he had yssue Simon, Guy, and others sonns, yet they neuer enjoyed this office of stewardship, or earldome of Ley-

cester; the office was given after [as I take it] to Edmund, earle of Lancaster, and soe remained in that house, till it was incorporated in the crowne in king Henry 4. But I must not forgett a memorandum in the tyme of king Henry 3. Before this casualty there was contention betwixt this Simon and Roger Bigod descended from Adaliza afore-sayd, att the coronation of queene Elianour, for the office of high steward, but it was allotted vnto this Simon in respect that he had given to Roger for his right therein, tenn knights, or knights fees, seaven and an halfe whereof he had payd, and the rest was ready to pay, which being confessed by Roger Bigod, he was barred by the king's owne doome and judgement, &c. For the office it selfe thus much.

In tymes past there was wont to wander throughout Normandy a certaine justicer, who was called the prince's seneschall, or steward, and what belonged vnto his office, may best appeare in the old customary booke of the dutchy of Normandy. And I doubt not, but it will be agreed, that what belonged vnto that office, must needs also be attributed vnto this, the very same gouernment and office being planted, and executed here in England: among many others I will cite but these few.

1. That this office is vnder and immediately after the king, to ouersee, and gouerne the whole kingdome, and all the offices of justice thereof, boeth in tyme of peace and warre.

2. If any complaynt be made either to the judges, or to the king, and the complaynant be not able in due season to obteyne remedye, he is bound to receaue their complaints, and keepe their petitions till the next parliament, and to call judges to account that delay or deny justice.

3. If the king haue euill counsellours, such as be hateful to the people, he is to aduise him thereof, and to use his best endeavour for their remoue, as it happened to Goodwyn, earle of Kent, in the tyme of Edward the confessor; the like to Hubert de Burgo, earle of Kent, in the tyme of king Henry 3. the like to Peirce Gaueston in the days of Edward the 1st, yea, their authority stretcheth to a little larger size than this, whereof

whereof it will more plainly appeare in an auncient manuscript discourse, intituled, *hic annotatur, quis sit seneschallus Anglia, & quid ejus officium*, being in the hands of some antiquaries.

It belongs to his office to limitt and bound townes, and villages, and to cause streetes, paths, and highwayes, to be sett in their auncient place, and those which be stopped, to be opened.

After the death of the prince, he keepeth court in the king's hall judicially, to receave petitions of such of the nobility, and others, as by reason of their tenures clayme to doe seruice at the new king's coronation, as did John duke of Lancaster, earle of Leicester, high seneschall of England att the coronation of king Richard 2. and Thomas Percy, earle of Worcester, as substitute and deputy to Thomas the king's sonn, being then very young, att the coronation of Henry 4. Sithence that tyme the office hath bin extinct in the crowne, and experience sheweth, that vpon the arraignment and tryall of any peere of the realme vpon the indictment of treason, or felony, the king useth to graunte the office of stewardship of England, *pro illa vice tantum*, to some peere of the realme by letters patents. Thereupon he directeth forth a precept to the justices, before whom the indictment is taken, willing them to certify the same indictment att a day and place by him assigned; and doeth likewise direct another precept to one of the serjeants att armes, for the summonition of the peeres against the day of tryall. The like precept doeth he also direct to the lieutenant of the Tower, for bringing forth the peere being prisoner to tryall. Before 20 Henry 3. a precipe did lye for tittle of land against the king, but whither the writ should be awarded vnder the teste of the steward, or the constable, quere. By the statute of 33 Henry 8 cap. 20. for due processe to be had in high treasons in cases of lunacy or madness; if any peere of the realme after treason committed, and confessed before any of the king's counsell, doe fall lunaticke, yet there shall be ordinary proceedings to, and in his arraignment, as if he were *compos mentis*.

And in a charter of confirmation of king H. 3. dated 26 Maijanno 11 H. 3. to the abbey of Glaſtenbury, amongst other witneſſes in the teſte is put *teſte rado filio Nicholai ſeneſchallo noſtro.*

De ſeneſchallſia domus regis.

For the exp laying of the ſecond member of my former diuiſion of the generall queſtion of ſtewardſhip, the old booke of record called *domus regis anglia*, preſerued in the counting houſe of the houſehold, can beſt teſtify. And becauſe this office [as I take itt] runns not in inheritance, but ad libitum regis, I will onely ſpeake of the nature of the office, and the office itſelfe.

1. I take it, the ſteward of the king's houſehold receaueth his charge of the king's high and proper perſon, and the houſehold ſtaffe, in theſe words: *Senefchall tenex le baſton de noſtre mayſon.* By which forthwith he is alſo ſteward of the Marſhallſey, that is the court of the houſehold, of which he is a iudge of life and limbe. And the treaſurer, comptroller, coſſererer, two clerks of the Green-cloth, and the chiefe clerks of controllment, ſitt at the boord of Doome or Green-cloth with him in the counting-houſe, but as recorders and witneſſes of the trueth, himſelfe being as iudge, commander, and guyder of the whole houſe.
2. He is to be ſerued, except in the king's chamber, or in his preſence, couered, but to haue none aſſay.
3. Noe commandment nor charge ought to be giuen by any officer in court without his notice, and aſſent firſt had, and in the houſehold rules and judgments he repreſenteth the king's eſtate, and his ſtaffe is taken as for a commiſſion.
4. He may annul ſome cuſtomes of the houſehold [*ſaluſ pro honore, & proficuo regis*] by aduice taken at the Green-cloth counting-boord.
5. Of auncient tyme he had daily in the Hall eating, a chaplaine, two ſquires, foure yeomen, and in chamber daily for his breakfast, meate, and liuerye for all night, eight loaves, foure meſſe of great meate, two rewards of roaſt, two pitchers of wine, ſix gallons of ale, and from Allhallowntide till

till Easter, one torch to attend upon himselfe, one tortois to fetch his livery by, three perches of waxe, six candles of waxe, eight candles of tallow, foure faggots, litter, and rushes all the yeare of the serjeant vsher of the hall and chamber, and after winter season foure shides, two faggots, and when him listeth to haue more largely in any thing, then his chamberlaine, that doeth fetch and receaue it, must record thereof by tally, or bill in the counting-house, and of the counting-house for his fees att Easter and Michaelmas twenty marks, and for his robes sixteene marks, and for his napery att the foure annuall feasts three pieces of great linnen cloth in the great spicery, or else in money thirteene pounds one shilling and foure pence.

This steward representeth the state of an earle, and by the statute of the 21 of E. 3. cap. 21. in respect of diuers abuses committed by the king's butlers and takers of his wine, it was enacted, that the steward or treasurer of the household should assigne warrant for wine for the king's majesty's household. And the statute of the 27 of E. 3. cap. 8. If any plea happen touching matters of the staple, and concerne any of the household, the steward or his lieutenant, and the marshalls of the household, shall be with the mayor of the staple, to see that right bee done, &c. In anno 3. H. 7. cap. 13. the compassing of the death of any counsellour of estate, steward, treasurer, or comptroller of the household is made felony, and judgment to be given, and execution done accordingly, and there is layd downe the manner of proceeding, to impanel a jury of the king's seruants in checque roll, &c. Another statute was made 15 H. 6. cap. 1. touching pleas to be holden before the steward of the household, but nothing else touching the authority. I haue seene the very plea in 18 E. 3. [when Glastonbury was within the verge, and the king lay thereabouts] of the libertyes, and allowance thereof vnder the seale of Ralph de Stafford then steward, the seale being a cheuron in a plaine feild with two lyons supporters, and ouer the scutcheon a lyon passant gardant, with this circumscription:

scription: *Sigillum officij seneschalli* [the rest being broken] and the seale little bigger then a sixpence, but att the end of the record written in *cuius rei testimonium Sigillum officij marescalli domini regis presentibus est appensum*. The like allowance was formerly made to the same abbey in 5 Edw. 3. before Radulphus de Neuill *seneschallus hospitij, & marescallus, &c.* And the like also in 14 E. 3. The plea begins thus: *Placita aula ducis cornubie, comit. cestrie, & custod. Anglie apud Glastoniam, &c. coram Nicolam de Beech, Edmondam de Kendall militibus, & Hugone de Berewick iusticiar. ad diuersas felonias & transgressiones in presentia, & infra virgam hospitij dicti ducis audiend, & terminand. assignat. nomine seneschalli & marisc. in forma qua dominus rex esset pressus.* By which record it appears, that in the absence of the king [being perhaps in France] Edward duke of Cornwall was custos of England, and that the verge was holden as if he had been present, and that the stewardship of the household was executed by deputy nomine *seneschalli*, though a judicial place. I fynd in an old deed, dated 8 Martij 21 E. 3. amongst others, teste Johanne de Gray de Rutherfeild *seneschallo hospitij*. And in another dated 11 December anno 1 E. 3. teste Johanne de Roos *seneschallo hospitij nostri*. But to make a perfect series of the stewards of the household ab origine, it lyes neither within my reading or sufficiency to performe.

John Montacute seneschallus Hospitij, anno 9 R. 2. 12^o Januarii.

N^o IV.

Of the same.

By Mr. HOLLAND.

1 Junij 1603.

I FYND in Geffrey of Monmouth, that in the tyme of Cassibelan, Belin was his steward, and vnder him master Justice; for soe the translation which I haue in English very auntiently written doth name him, whereby it doeth appear that the name of that dignity was used amongst the Brittons.

At the coronation of king Henry the 4th, in the right of the earldome of Leycester, the king gaue the office of high steward of England, as belonging to the sayd earldome, vnto his son Thomas duke of Clarence, and by reason of his tender age he was assisted by Thomas Percy earle of Worcester; and he sate as lord high steward of England by the king's commandement in the white hall of the king's pallace of Westminster, and caused enquirye to be made, what offices were to be executed or exercised by any manner of person on the day of the king's coronation.

In the tyme of king Richard the 2. the duke of Lancaster was high steward att the arraignment of Richard earle of Arundell, and the earle being brought before him [the king being also present] the duke sayd vnto the lord Neuill, take from the earle his girdle and his hood; and soe that was done; whereupon the articles of the appeale were reade, and the earle pleaded a pardon, whereunto the duke of Lancaster replied; Thou traytor, that pardon is reuoaked. The earle answered, truely thou lyeest, I was never traytour. The king being present, said to the earle, make answer to thine appeale. In the end the duke gaue sentence against the earle in this manner. Richard, I John, steward of England, judge thee to be a traytour, and I condemne thee to be drawne, hanged, beheaded and quartered. But the

the king for reuerence of his bloud commanded him onely to be beheaded: where itt doeth appeare, that the steward may giue judgement and sentence in the prefence of the the king.

When the king dineth in his chamber, the steward may dine in the hall vnder the cloth of estate, the same being rolled up aboue his head, and such knights as doe wayte on the king may sitt at dinner with him.

The statute of 31 H. 8. which hath set downe the placing of great officers, doeth make no mention of the high steward. And therefore I referre his place and authority to be deliuered by them that haue seene more records thereof then I haue done.

JOSEPH HOLLAND.

Nº V.

Of the same.

By Mr. THYNN.

THIS office of steward is in Latine called *oeconomus*, *seneschallus*, *comes & maior palatij*; in French *seneschall*, *graund maistre del Hostell de roy*, or *prouost del palace de roy*, and in English *steward*. For the etymologie whereof there be diuers opinions, among which, one is of Tilius in his second booke de Rebus Gallicis, who sayth *seneschallus* is composed of this German word *SCHALL*, signifying a seruant or officer, and of *Gefind*, which denoted a family, soe that *seneschallus* is *officialis familia*. But Lupanus supposeth it in his second booke de magistratibus Galliae, to be deduced of this old word *Sen*, signifying justice, and *schalcum*, signifying *praefectum* or *gouernour*; soe that he should be supreme in justice. Boeth which definitions doe aptly agree to the nature of his office, for he is supreme judge to administer justice in the king's palace, whereunto

whereunto, att the first, was the onely resort for justice, boeth of the household and the realme. This office I make noe doubt to be as auncient, as since the tyme that kings, and families of household, had being. And therefore leauing the Hebrews, Greeks, and Romans, we will draw neare home, and talke of the French, the Saxons, and our moderne English. Amongst the first two families of the French kings, which were of the Merouingians and Carolines, this officer was onely knowne by the name of *comes*, or *maior palatij*; but in the third family of the Capetines, whose tyme yet continueth, though changed into the name of the familys of Valois and Burboun, this word *seneschall* came in place for that officer. But how we shall apply these offices of the former age with the moderne, I know not; for if Polybius in his Roman history, when he treateth of the first couenant between the Romans and Carthaginians vnder the consulls Brutus and Valerius, doeth excuse himselte, that many parts of those conditions were not vnderstood of the most studious and diligent antiquaries, being but 353 yeares before his tyme, how much more may I excuse myself in meddling with the signification and nature of words of one other language used aboue 800 yeares synce: and therefore if I erre in my discourse, you must pardon it. But to proceed, as well as I can, I will leaue forreyne matters and come to our own home.

The Saxons had this officer, called in their own language *flowhere*, which is lord or gouverneur of the house, place, or habitation; for so is this word taken, although *hame*, or as we now call it, *home*, doeth depote a house or station. This *flowhere* was in Latine called amongst the Saxons *oeconomus* [for the Saxons did much affect Greek words] being also termed *pracurator aulae* & *seneschallus*. For the first, I find in an old charter of king Cuthred, dated 749, wherein he gaue the land of Cleere to the church of Winchester, that Athelardus doeth in his subscription terme himselte *oeconomus* for *pracurator aulae*. Esgarus, who was also *stallere* or *vexillifer regni* doeth

Antiquity, Authority, and Succession,

subscribe his name to a deede of Edward the confessor, by this name of *Esgarus, regia aule procurator*. And by the booke of saint Augustines in Canterbury, Haraldus was *seneschallus* of Edward the confessor, and so was Hugoline boeth treasurer, chamberlaine, and steward to Edward the confessor; for in that king's charter made to Randoulfe Peperkine of the hundred of Dauncy is witness the steward Howeline, as followeth in these words:

Witness the bishop Wolstone,
And booke ylernid meny one,
And Sweyne of Essex our brother,
And taken him many other,
And our Steward Howelyne,
that besoughten me for him.

The Normans likewise had this steward by the name of *seneschall* in their tyme; but although he was sometymes called steward of England, yet he was but *seneschallus regis* at the first, and so was Hugh Grentmeisnell the first steward of England, hauing that name for distinction from the steward of Normandy, as had also the chancellours, and treasurers, and other officers, being att the first onely termed cancellarij, and thesaurarij regis; but after for distinction-fake, when the kings had France, Ireland, Gaskoyne, &c. then came the names of chancellour of England, of Ireland, of Paris, and soe of other officers; the constables of England, were also so called to distinguish them from constables of Normandy; for notwithstanding, that some affirme the Bohunes to be stewards of the household to the first Norman King's, thereby to proue a difference, euen from the beginning of the Normans, betweene the steward of the house, and of England, because the Bohunes had the one, and Grentmeisnell the other, yet I haue seene a note to proue, that Bohune was substitute to Grentmeisnell, which in continuance of tyme grew to be a primer office, as did the barons of the exchequer so called, because att the beginning they were substitutes of the barons of the realme, cheife officers of those places, vntill the tyme of King Henry 2.

for

for from that tyme substitutes held the place appoynted by the king, and kept the title of barons, as were they, to whom they were substitute. But let these stewards then be distinguished, as they are att this day [for I will not impugne, what custom and tyme hath confirmed] we say that these two offices hauing diuers functions, must be seuerally spoken of, and therefore we will first speake of the steward of England, and then of the household.

Touching the steward of England, we will first speake of the succession, and inheritance, and after a little touch of some of the function, for itt will be ouer tedious to sett downe all that I haue seene touching their office. The Succession is this. First, William Fitz-Osburne earle of Hereford, was steward to William the conqueror; then Henry Bewclarke his sonne, being after Henry the first, was steward also to the conqueror. Thirdly, the conqueror, as appeareth in the booke of Doomesday, gaue to Sir Hugh Grentemeisnell, younger son of Robert Grentemeisnell of Normandy, the lands of Hinckley, Petworth, Merstone, Queinton, and many other lands with the stewardship of England, as it is termed. He married a great inheritrix called Alicia, and had two daughters, the eldest married to Robert the third of that name, earle of Leicester, furnamed Blanchmaines, or White hands, who was steward of England in her right; from which tyme the stewardship went by inheritance into the house of Leicester and Lancaster by that line; and the other, the second daughter, was married to Hugh Bigott, first earle of Norffolke. Robert Blanchmaines thus possessed of the stewardship of England had yssue by Parnell his wife, but he dying Robert Fitz Parnell [soe termed after his mother] was steward of England, followed Richard the first in his Palestine warrs, and dyed anno 1204, leauing his two sisters his heires, between whom the whole inheritance was diuided in the tyme of king John. Amicia the eldest sister was married to Simon Montford, younger brother to Almerick earle of Eureux in Normandy, and the second sister Margaret was married to Saher de

Quincy, earle of Winchester, to whom she brought the moiety of all her father's lands. This Simon Mountford was in the right of his wife earle of Leycester, and steward of England, for that was allowed to him in the partition of the lands, and the matter adjudged afterwards against Hugh Bigott [who contended with Mountford for that office att the coronation of Queen Eleanor, 20 Henry 3.] but Mountford did not long enjoye the same, being banished with his children for his contumacy, and his honour and lands bestowed vpon Randolfe, earle of Chester, whom some affirme to haue bin also steward of England, although the king [as most proofes avouch] kept the stewardship of England in his owne hands. After the death of this Simon, some make Almarike his eldest sonn to be steward; but I for this tyme receaue not that opinion, because I know, he alwayes liued beyond the seas, and I haue seene the letters which he wrote to Henry 3. to inuest his younger brother Simon in the earledome of Leycester; which second Simon comming into England, and marrying Elianor the sister of Henry 3. and widdow of young William, earle marshall, was made earle of Leycester, and steward of England; but he rebelling against the king, lost both his earledome and stewardship, which Henry 3. gaue to Edmond his younger sonn, earle of Leycester and Lancaster: from which tyme it continued in that house, vntil it was drowned in Henry 4. king of England, son of John of Gaunt, last earle of Leycester and Lancaster, except that in the interim, Edmund of Langley was for a little tyme made steward; as some haue thought. But after that Henry 4. had the crowne, it was wholly excluded from succeeding by inheritance, and then bestowed att the king's pleasure, and that for certaine tyme euen to our age, as occasion serued. For the authority of this high steward, because it is almost vnlimitable, and soe absolute, as it is almost equall with the king's power, I will referre you to the customary of Normandy, where much of his office is sett downe, and to some other large discourse thereof, which I haue, and cannot without ouermuch tediousnesse bring to such compen-

compendiousnelle as I would, and therefore doe omitt it, seeing therein is att large deliuered, whatsoeuer he is to doe in the king's absence and presence.

Touching the steward of the household, it is as auncient as the conquest, as some will haue it; touching which, I haue before shewed my minde, and therefore will onely now speake of his creation, out of one old booke of mine, for the king's household, made in the tyme of Edward 4. and called *domus regis Angliæ*, which affirmeth, that his creation onely consisteth, by the high and proper person, the king's deliivering to him the household staffe, with these words, *seneschall, tenez le bastone de nostre Maisone*. His allowance in court for his iurisdiction, with all other things belonging thereunto, I shall omitt, boeth for breuity, and because I haue not leysure to write them, not doubting, but that some of this learned assembly will remember them, especially the lawyers, who fynde much thereof in Stanford, and in the statutes of Edward 3. Henry 7. Henry 8. Onely I will touch this, that he also by the deliivering of the staffe, is steward of the marshallsey, and so in all patents made by princes, he is *seneschallus, & mareschallus hospitij nostri*. Lastly, I will note, when this name of steward did cease, what new name was induced therefore in the meane tyme, and when it was again reuiued, all which happened in this our later age. For Charles Brandon was made steward with a French title of *le grand maistre del hostell* by king Henry 8. John earle of Warwick by patent was made *magnus magister hospitij, sive le grand maistre del hotel le roy*; for soe be the words of his patent. 4. Edward 6. Pawlett lord saint John after had the like stile and title in the tyme of Edward 6. and soe this name continued but short, during the tyme of Henry 8. and Edward 6. for queene Mary did againe make Henry, earle of Arundell, lord steward of the household by that name, who surrendered the office in 4 & 5 Phillippi & Mariae, which name did euer after continue during the reigne of queene Elizabeth. Thus omitting to sett downe, as willingly I would, if leysure serued, a note of such stewards of

of the household, as I have collected by record from the tyme of king John. I committ this discourse to your favourable judgements,

N^o 6.

Of the same.

By Mr. TATE.

4 Junii 1603, anno 1 regis Jacobi.

IF the limitts of the question excede not the strictness of the words, and we be holden to the antiquity of a steward, I meane to this name, and not to the office, few words will expresse all in thought, and nescio be the summe of my speech; for I know not soe much as what language the word is: such an officer as is meant by the word, the Græcians had, whom they termed *Οικονομος*; the Romans *dispensator*, or *villians*; the old Franks *seneschall*; the Germans *scheffner*, and *hanseveewatter*; the Britons *Pentuly*. Amongst the Saxons I find not the word steward, but *Gereva*, sauing in the supposed charter made by Edward the confessour, of the forrest of Essex to Randol Peperking, wherein Howelin his steward is sayd to be a wittness, which if I had not seene allowed of record, I should cleerely have held it to be forged; but admitting it to be an old English, or Saxon word, what shall I say, it doeth signify, or how it is compounded? I dare not say of *stowe hard*, *stowe* for *bestowe*, or *lay forth*, and *harde* for *horde* a treasurer, as though it countervaild *dispensator*; or of *store-warde*, the preserver of the store, and prouision of the house. If I should say, it came from *sty-warde*, a housekeeper, to proue this by two wittnesses, I should bee forced to fetch one out of the hogstye, and the other from Winken de Word, in whose promptuarum parvulorum, *sty* is sayd to be, *ca/a* as well as *hara*. I should guess it to be a single word,

corrupted in pronounciation by addition of the letter D, as we often heare some pronounce vilde, instead of vile; so *stuerd* for *stuer*. *Stuer* is an auncient Saxon word, at this day pronounced *styre* with vs. *Styern*, or *sterne*, which is in latine *gabernaculum navis*, and may metaphorically be taken for such ruler of the house, as a steward is.

Some men are of opinion, that besides the common stewards in leetes, court-barons, and boroughs, there were in auncient tyme, two distinct officers of state in this realme. The power of the one extending it selfe ouer the whole kingdome, and the other commanding onely in the verge of the king's household.

Touching the antiquity of such an officer, whose authority should exceed the limitts of the verge, I will joyne with any in finding an ignoramus; for I thinke, there was not euer of antiquity any such officer in England. In Normandy there was a generall seneschall ouer the whole dutchy, who continued his office, till Normandy was seized by the French king; and I find, *term. pasche 10 & 11 Johannis regis*, that William Fitz-Rafe then held that place, and had power to hold plea of freehold within that dutchy. And in 32 Edward 1. an office was found at Edenborough for Ricardston's lands, which were holden of the seneschall of Scotland; and though John de Ricardston was slain at Dunbar in a battle against king Edward 1. yet his lands escheated not, but descended to Mathew his sonn, and the tenure continued of the seneschall. I will not deny, but some writers may be produced, which make mention of *seneschallus Anglia*, or *seneschallus regis Anglia*, or *magnus seneschallus*; but I vnderstand thereby noe other, then *seneschallum hospitij domini regis*. Examine the etimology of this officers name in any language, and you shall fynd the office had its originall in the household, and in the same onely was exercible. *Οικονομος* commeth of *οίκος*, a house. *Seneschallus*, or *senescalk*, which is compounded of *sine*, or *chefine*, that is *familia*, and *scalk*, which is *minister*, as Cornelius Kilianus doeth very well obserue. *Pentuly* was cheifest of the foure and twenty officers in the Britisch king's

king's house, and soe the word it selfe importeth, *sen*, signifying *caput*, or *principalis*, & *teuly*, *familia*. Beda calleth this officer *major domus regis*, and a late statute intituleth him, the lord great master of the house-hould. *Dispensator* is a name proper to the steward of an household, and neuer was belonging to the steward of a realme. In Fleta, and in auncient statutes, I finde mention made of the office of *seneschallus hospitij*, and of *comes seneschallus*; but of this other great officer ouer all the land, I find not a word in them, or any other authentically authour before the tymes of king Edward 3. I confesse, I haue seen a discourse beginning thus; *hic annotatur, quis sit seneschallus Anglia, & quid ejus officium?* wherein is giuen him a perpetuall superintendency ouer the king's priuy counsellours, and ouer all the officers, and ministers of justice in this land; but of the trueth and sincerity, thereof I am very suspicious, for the examples added, to confirme the theorick thereof by practice, the histories disproue. And if he be made *superuisor*, and *reſtor sub rege*, and *immediate post regem totius regni*, what place is left for the chiefe justice of England, who [as the [Red-booke of the exchequer sayth] *est primus in regna post regem ratione fori*.

I will grant, there hath bin an officer in the high court of Parliaments, whose authority, as ordinary experience confirmeth, extendeth to the calling of the houses, and giuing them their oath, who is a principall or cheife judge in all judgements giuen in parliament, either in writts of error, demurrers, or attaynders, whom the lords without the assent of the commons are sayd to choose, 1 Henry 7. 19. But that choyce, I suppose, to be nothing else, but their assent to the king's nomination. I doe not perceaue any reason to induce me to yeald that this officer was any other than *seneschallus hospitij*, before whom, I thinke, all claymes were made for seruices to be done at the coronation. For though this office, till the tyme of king Henry 4. resided in the families of the earles of Leicester, and at king Richard the second's coronation, John king of Castile, and duke of Lancaster, executed the same,

as tenant by the curtesy of the earldome of Leycester, by reason of Blanche his deceased wife, and that Wintershal, Fitz-John, Crombwell, Devereux, Percy, &c. wrote themselves *sheneschallos hospitij regis*, in the tymes of Henry 3. Edward 1. Edward 2. Edward 3. and Richard 2. yet I take it that these executed that place, as deputies to the other, and not in their owne rights.

Statute
1 Elizabeth
3. Thomas
counte de
Lancaster,
& de Ley-
cester, Se-
neschall d'
Angleterre.

Synce the tyme of king Henry 8. the kinges and queenes of this land have used hae vice, to make a lord steward, not by patent, as I take it, but *traditione baculi*, to arraigne the nobles of the land out of parliament, and to try them by their peeres, as may appeare by the 13 Henry 8. when the duke of Buckingham was attainted; but touching the beginning of that use, I haue noe opinion fauouring of antiquity. If any man insist upon the first case in 1 Henry 4. I desire him, to shew mee any record thereof, or of the like soe auncient, as that: whether he euer saw a printed yeare booke of king Henry 4. wherein that case was not? whether he euer saw it in any auncient written copy of king Henry 4. yeares? And in what king's tyme that case was first printed, and published? and whether the learning in our bookes touching that kind of tryall by commission, and out of parliament, be auncient, or puisne to the first setting out in print of that yeare?

The office of steward of the king's household, synce the office of cheife justice of England ceased, is growne greater, by reason he supplyeth his place in many things, as Fleta lib. 2. cap. de differentijs curiarum, & de Placitis aulæ declareth, from whence for the most I deriue, what I shall speake concerning him.

To this seneschall, besides his office in household affayres, and the government thereof, which appeareth in a booke made in king Edward 2. tyme called *Domus regis Anglia*, and in another of that name made in the tyme of king Edward 4. boeth which I have copies off; to this steward, I say, it appertayneth in the courts held in the king's hall, to heare, and determine in such sort, as justices in Eyre used to doe, all matters concerning the peace done within the verge,

which in auncient tyme conteyned twelue leagues round about the house, where the king made his aboad. Of criminal causes, and personall he might hold plea without writt; and soe he might of freehold, but not without the king's writt.

For speedyer execution of justice, he might cause all assises depending in any county within the verge, all appeales there begun, and not ended, and all prisoners with their causes of deteyning, to bee brought before him. If he wanted tyme by reason of the king's remoue, to determine those causes, either begun first before him, or after remoued into this court, he might adorne them into the king's bench, to the assizes, or what court else he thought good.

This power, when there was a cheife justice, was deuied from him; for in his name he sent all his writts, but synce the office of cheife justice of England was discontinued, he hath in part exercised his authority, and sendeth out writts in his owne name.

In his proceedings he was to hold his course; first to heare causes criminall, after that injuryes complaynd off, which being dispatched, he proceeded to assises, and juryes, and last of all decided controuerfyes arising from contracts betwixt man and man.

This was the ordinary jurisdiction of the steward of the household.

Besides which, he had a jurisdiction extraordinary arising cheifly from the permission and assent of others; of which fort I take the case of Ingelram de Nugent, 14 Edward 1. to be. This Ingelram was taken in the king of England's court in Paris with a siluer vessel, which he had stolen from the king. The French king's castellane would haue tryed him for this fact in the courts of France; but king Edward 1. claymed, and had allowed to him, after long debate, the prerogative, and priuiledge of his household, and in 17 Edward 1. William de Lesne being appealed for robbery by

by him done in the king's court in Gascoigne, could not avoyde the appeale, because it was done when the king was in another's kingdom.

Another sort of his extraordinary jurisdiction was, when certaine persons having agreed to do some act, voluntarily by their writings submitted themselves to the desires of the steward or marshall of the household: if it were accordingly performed, this contract, were it made within the verge or without, was determinable before the steward of the household, whereof Fleta citeth a cause or case betwixt Ranulph de Folshank, and Henry de Wootten 15 E. 1.

N^o VII.

Of the same.

By Mr. DAVYS.

I THINKE the office to be auncient, but doe not synd that it was an office of continuance in the officer to whom it was granted, as the other great offices of high constable, high marshall, and great chamberlaine of England were, which haue all bin offices of inheritance. But the grant of this office was alwayes [for ought I can learne] in nature of a commission, which as soone as it was executed hac vice, was determined. For it was euer granted to some great personage, either vpon the arraignment of a peere, or to decide controuersyes att the king's coronation for performances of these seruices onely, which being done, the office did cease, whereof he made demonstration by breaking his white rod.

Notwithstanding 1 H. 4. it is noted in our yeare booke vpon the arraignment of Holland earle of Huntington, that because the office of steward of England was then voyd, the king granted the office to the earle of Deuonshire to doe right to the said earle of Huntington, and commanded by the sayd commission all the lords to be attending on

First by inheritance,
after by
commission.

him : Which note that the office was then voyd, doeth seeme to imply, that it had bin an office of continuance, and that it was then voyd by accident ; yet in the same yeare the same king had granted the office of high steward of England to Thomas his sonne att his coronation. For the antiquity, perhaps it hath bin an office at the coronation euer synce the conquest ; for the office is French : But for his power to arraigne a peere of the realme, it cannot be more auncient then Magna Charta, which ordaynes the tryall *per pares* in these words : *Nullus liber homo capiatur, vel imprisonetur, vel utilegetur, aut exuletur, aut aliqua modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per iudicium parium suorum, vel per legem terra.*

Touching his commission att the coronation, it is diuers from that which he hath for the arraignment, and therefore, though the name bee one, viz. lord high steward of England, yet the offices are in nature altogether diuerse. For att the coronation he hath power to decide differences that arise touching places of seruice at the coronation, whereof there is a notable precedent, 1 H. 4. where Thomas duke of Excester, the king's second sonn, was made lord high steward of England, assisted by the earle of Worcester, which office the commission notes to haue bin belonging to Henry the 4th before he was a king, in right of his earldome of Leycester.

Touching his commission for the arraignment of a peere, he hath power to make a precept to his serjeant att armes, to summon twenty or more lords of parliament, and the like to the constable of the tower, for the prisoner to appeare before him att the day of the arraignment. At which day he hath a court erected in the king's hall, where boeth the serjeant and the constable returne their precepts. Then the lord high steward declares the cause of the assembly, and the clarke of the crowne reades the enditement, to which the peere pleades, and putts himselfe to be tryed by God and his peeres. Then the king's counsell giue euidence, which being done, the prisoner is retired from the barr ;

of the High Steward of England

barr; the lords consult of their verdict, and being returned the lord steward demands of every one his verdict particularly, beginning att the youngest, and if the greater part acquitt or condemne, he giues judgement accordingly.

Thus much for the lord high steward of England; but I fynd other officers called lord stewards of an inferiour degree, whereof one is an office permanent, and the other momentary, as the office of lord high steward of England.

The first is the lord steward of the king's household, which is euer an office granted for life, and is the principal judge of all matters arising within the verge; for all pleas that are decided in the Marshalsey are tried before the steward and marshall, as it is expressed in all the old statutes; and by the statute of 15 E. 2. the steward of the king's household is to make extreates into the exchequer of all fines in the Marshallsie.

Moreouer by the statute of 3 H. 7. the lord steward of the household, with the treasurer and comptroller, haue power to arraigne and try any of the king's seruants in the check rolle, for any conspiracyes against the person of the king.

The name of this officer was changed by act of parliament 23 H. 8. and called *grand maistre del hostell de roy*, when that office was granted to Charles Brandon duke of Suffolk; but afterward 1 Mar. it was restored to the ancient denomination, when it was giuen to the earle of Arundell.

The other office of lord steward, which is momentary, is the lord steward, which is chosen in the higher house of parliament, before whom writts of error are brought to reverse judgements of the King's Bench. Vid. 1 H. 7. *Flower deue's case*.

Of the same.

By Mr. CAMDEN.

WHOM we call in English *steward*, in Latine is called *seneschallus*, the etimology whereof in boeth tongues is but conjecturall, yet boeth certainly are deduced out of the old German tongue, which is the especiall matrix of languages in this part of the world. *Seneschallus* is deriued by some ridiculously from the Latine word *Senex*, and the German *schale*, which signifyeth a *minister*, as though it should import an auncient *seruitour*; by others from *ge-sind-schale*, as the *seruitour* of the family. *Steward* is supposed to be composed of two English Saxon words *sted* or *stith*, a *place*, and *ward*, as if it should signify the *guardian* and *conseruer* of the place.

The word *seneschallus* I haue not found more auncient then in *legibus Alamannorum*, titulo xii. and the word *steward* I haue not reade in the Saxon age, but *hus-geriff* in like sense; yet the necessity of the function assureth vs they had the office in vse, and Esgarus, who was by dignity *stallher* to Edward the Confessour, amongst the testes in a charter made by the sayd king to Waltham Abbey, is stiled *rigid procurator aula*, which seemeth to allude to the office of a steward; and the French antiquaries consent in this, that after Pepin came to the crowne he ablished the *maires du palais*, and substituted in their roome the *seneschalls*, to heare causes and differences happening in the court, and to giue order for domesticall expences and other matters. In the tyme of William the Conqueror, Hugo de Grantmeisnell is noted to haue bin the first steward of England, and that he held the honour of Hinckley in the county of Leycester by that seruice: his daughters were marryed, one to Robert earle of Leycester, the other to Roger Bygott, between whose successors was a long contention for that office, which was not then limited in the prince's

prince's pallace, but was soe extended, as it had jurisdiction in some cases farr larger, and, as some thinke, through the whole realme; when as Robert Blanchmaines earle of Leycester, in respect of this office, is called by Johannes Sarisburiensis in Polycratico, *proconsul totius Britannia*. Neither doe I thinke, that by this office he was *justiciarius* or *justitia Angliae*; for I fynd others not descended from Grantmeisnell to haue borne that office, as two Bassetts, Ridell, Clinton, and yet I see in Robert de Monte, anno 1160. Robertus de Novo Burgo is called *dapifer* and *justitia totius Normannia*.

Whereupon I thinke good to note, that I haue obserued, that *dapifer* & *seneschallus*, *dapiferatus* & *seneschallia* in that age were all one: which appeareth by the charter of king H. 2. and R. 1. his sonne. For whereas king Henry the second granteth to Hugh Bigott *dapiferatum suum ita libere, & quiete habendum, sicut pater ejus Rogerus melius, & liberius tenuit tempore regis Henrici avi mei*. King Richard the first restored this office to Roger his sonne in these words, *Sciatis etiam, nos reddidisse ei seneschaltiam suam & hereditibus suis ita libere, integre, & honorifice habendam, sicut Rogerus Bygott Avus suus, & comes Hugo pater suus habuerunt*: soe Alanus de Chrona, which in one place of Ingulphus is named *seneschallus regis*, in another place by the same author is named *dapifer regis*; and William Courcy, which in his owne evidences is called *dapifer regis*, by Houeden p. 312. is called *seneschallus regis*. So that it is to be noted, that beside *dapifer* or *seneschallus Angliae*, the kings had many *dapiferi*; for in a charter of king Richard the first I fynd, that Stephanus de longo Campo, & Rogerus de Prattello, intituled themselves *dapiferi*.

Of the long contention before mentioned for the stewardship of England, I find this in the Red booke of the exchequer, fol. 222. anno vicesimo Henrici regis filij Johannis regis, coronatione reginae Alienora filia comitis prouincie apud Westmonaster. *seruiuit eo die in seneschalcia Simon de Monteforti comes Legecestr. cui de jure competit illud officium,*

factum, licet contradiceret Rogerus de Bigott comes Norfolc. qui dicebat, factum esse jus illud a veteri. Ad quod respondit dictus Simon, quod tempore regis Johannis facta inter eorum predecessores contentione super hoc & hoc modo pacificati. Quod comes Legecestrie dedit comiti Norfolc. seruicia decem militum, & comes Rogerus Norfolc. remisit totum clameum suum, quod habuit in seneschallia. Ad quod replicauit alius, quod adhuc restabant ei assignanda duo Feoda, & dimid. de pradiitiis decem feodis. Ad quod respondit comes Simon, quod secundum legem terra bene potuit consequi sua arrearagia alia in curia domini regis, nec propter hoc debuit impediri, maxime cum confitetur, cum Rogero illam conuencionem, & se fuisse de septem feodis militum, & dimid. per illam conuencionem: & sic libere seruauit comes in ea die. Neuertheless what were the seruices and fees due to this office, were att this tyme soe vncertaine, that a commission was directed, as appeareth by the records in the Tower, to Lora countess of Leycester, then an anchoress at Hakington in Kent; but what she certified thereupon doeth not appeare; and afore that tyme there was the like ignorance in this case in France, as appeareth by the abbey booke of Anjou, when Foulke earle of Anjou was restored by Lewis the younger to the high stewardship of France, which was belonging by hereditary right to the house of Anjou, from whence our kings of England are descended.

This honour, after the attainture of Simon Mountford, was giuen to Edmund earle of Lancaster, vtill Thomas of Lancaster duke of Clarence, sonn to king H. 4. After much tyme, the kings att coronations and arraignmentes of honorable personages, assigned att their pleasure, one or other
Ad omnia & singula quæ ad officium seneschalli Angliæ pertinent hac vice tantummodò facienda & exequenda, in modo, & forma antiquitus debitis & consuetis; as we fynd in the records.

of the High Steward of England.

No IX.

Of the same.

By Mr. AGARD.

I SUPPOSE the same word steward to stand vpon the Saxon language rather then vpon the Latine or French: The Latine word being *villieus* or *dispensator*, sometye borrowing of the French *seneschallus*, and the French word *seneschault*, as being the most auncient and pre-eminent in authority, where command is vnder the prince; the Latine words signifying a *disposer* or *governour* of a family vnder the master of an house, or owner of lands or husbandry, soe as he is called also *oeconomus*, *tangam frugum & omnium, quæ domus possidet dispensator*. But for the naturall signification of our language, I take it to be deriued from the Saxon, the later sillable *ward*, signifying *watchfull* or *carefull* ouer any thing; for soe in like sence I fynd it expounded by an old booke of Canterbury [out of which I wrote the exposition of sundry Saxon words by alphabet] *ward, id est, custodia maris*. Likewise in Doomesday is this word *ineuward*, the booke it selfe expounding the word *vigil*, that is to say, a *watchman* or *warder* appointed to attend the sherriffe, and other the king's officers: and thus, *& inuenit, viz. duos ineuwardos*. Againe, *& in seruicio regis inuenit ineuwardum, vel iiij.*

Now to come to the fore part of the word, which is *stew*: lett it not seeme strange among you, I pray you, that I fetch that from an auncient English or Saxon word, which signifyeth a small poole or pond, into which, after a man hath sewed his great ponds, all such fish as is meatable fit to be eaten, is put, whence the good man of the house, or his steward may readily take it at his pleasure to be drest; so as he may well be called the storekeeper or wise distributor of the same. And thus is this word *stew* taken in, through all the shires of Stafford, Derby, and

Chester, so as I am resolu'd this to be the right signifi-
cation of the word steward.

Now for the antiquity thereof. Before the conquest the
first mention of it is in Edward the Confessour's tyme in his
charter for the keeping of Waltham forrest, beginning thus:
Ich, Edward, king, &c. Witnesse Bushop Wulston, and
booke many ylernid many one,

And Sweyn of Essex our brother,
And taken him many other,
And our steward Houelin,
That besoughten me for him.

This *Houelin* should seeme to be a man of great autho-
rity about the king, in that he intreated for the man, and
also was a witnesse to the charter.

After him I fynd William the conqueror created Hugh
de Grantmeisnell high steward of England, and gaue
him the honour of Hinkley in Leycestershire, as is men-
tioned in an old rolle in the king's treasury, wherein
is specified the pedegree of Robert de Mellent earle of
Leycester, who had yssue Robert Bosu, who had yssue
Robert oueles Blanchmaines, *qui petronillam filliam Hugonis
de Grantmeisnell accepit in uxorem, cum qua totum honorem
de Hinkley una cum seneschaltu Angiæ ex dono ejusdem Hu-
gonis adeptus est.* The same words hath Knighton the
auncient chronicler of Leycester abbey. By which mar-
riage the sayd Robert became steward of England in H.
2. tyme, as appeareth in the Black and Red bookes of the
exchequer in these words, which gaue him an honourable
commendation. *Vidi ego qui loquor, necnon modernis tem-
poribus Leycestria comitem Robertum virum discretum li-
toris eruditum, & in negotijs forinsecis exercitatum. Hic
ingentem habens animi virtutem, paterna quoque prudentia
sedulus amulator effectus est, cujus industria pluribus plena
penes principem nostrum Henricum secundum, quem nec pal-
liata prudentia nec dissimulata fallit ineptia, atque adeo va-
luit penes eum, ut ex mandato ipsius non solum ad scaccarium,
verum per uniuersum regnum presidentis dignitatem obti-
nuit.*

nuit. But now to come to the purpose: By this office he was cheiefe justice of England, president and cheife officer in the king's exchequer, the mother court of the realme; his place being most pre-eminent aboue all other, as appeareth in the sayd Red and Blacke bookes made in the said H. 2. tyme by these words. *Illic enim residet capitalis domini regis iusticiarius, primus post regem in regnoratione fori, &c.* Also *ex officio principaliter residet, immo & presidet, primus in regno capitalis, scilicet iusticia.* And in the chapter following, the question being made, *quid est huius tam excellentis fessoris officium?* It is answered. *Aliud verius attribui sibi non valet, nisi quod in omnibus, quae in inferiore, vel superiore scaccario fieri his prospicit, & ad nutum ipsius qualibet officia subiecta disponuntur, &c.* He might command Money to be payd for the king's seruice at his pleasure, and he might also make his wryt, &c. And further it is sayd of him. *Magnus est hic, cuius fidei totius regni cura, immo & cor regis committitur;* and therefore it is there declared of him and other great officers. *Quod a rege non possunt facile velli, propter maiora, & magis argentia.* In this tyme of Henry the second, was Richard de Lucy cheiefe justice, who, in the absence of the king in Normandy, bare the whole charge of gouernment of the realme, together with the queene, and keeping the seale, as appeareth by Richard of Anestys roll of expences in his suite of law, being in the king's receipt. And sure his authority was great; for there it is reported, that the sayd Anesty's aduocates, who pleaded a diuorce att Rome, brought from thence; *redeantes attulerunt iudicium de adulterio, vnam cartam archiepiscopo, alteram Ricardo de Lucy, tertiam michi;* and because the sayd Anesty brought not one to the king, the king was offended thereat, soe as the said Anesty was forced to send to Rome for one for the king. And Glanville likewise in that king's tyme was cheife justice: Behold, what was the place he held in the count of justice, by a syne then leaued, which I copyed out of the lydger booke of Osney. *Hac est finalis concordia facta in curia domini regis, apud Westmonaster. scilicet die Mercurij proxim. post festum*

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festum Sancti Georgij anno xxvi^o. regni regis H. 2. coram Gafro. Heliens. & Johanne Norwicense episcopo, & Ranulpho de Glanville, & Richardo Thesaurario, & Rogero Remsar, & Willielmo Rufe, & Roberto Mantell, & Willielmo Bassett, & Radulpho de Wigorn, & alijs justis. & baronib. domini regis, qui ibi tunc aderant, &c. which confirm the words of the Red and Black books.

This word *capitalis justitia*, by one which wrote in H. 7. tyme, a description of the Exchequer [which booke is in the king's library at Richmount] is declared, what his place and exercise was by these words: The king att this day hath assigned great lords, as the steward of his house. which then was called *capitalis justitia* or *presydent*; the chancellour of England, which then was called *cancellarius*; the constable; two chamberlaynes; and the marshall; which as yet be great lords; and the residew of the authority of the sayd great barons remayneth in them, which be now barons of the exchequer.

But surely the authority of the cheife justice or steward of England was great, as it appeareth by our historyes, wherein I beseech you, beare with mee, in that I betake mee more to my memory of that which I have read, then to recite the words out of the history which I haue not ready in hand in this poynt. The next I fynd in this ranke of cheife justice is Hubertus de Burgo earle of Kent, and cheife justice of England, who comming to appease a mutiny or vproare in London, calling the mayor, aldermen, and other auncients of the city together, declared to them the perill they had incurred of the king's displeasure, and forfeyture of their libertyes, in permitting such outrageous and furious tumults to goe unpunished; to whom one of the citizens of good worth and rank, thinking himselfe wiser then the rest, answered, that the citizens [the offenders as the earle called them] had done well in resisting some such matter as displeased them, in raysing power; whereupon the earle without further delay, or attending for a commission, commanded presently the same champion of the malefactours to be changed in Cheapeside, as I remember, without further tryall: which

which presently qualified the uproar, and since that time the memory thereof hath cooled the humour of busy heads.

We may see the authority of the lord steward is pre-eminent in this, that the king doeth appoint noblemen for their lines to be tried by their peers before him, and to be judged by him, who presently being set in his place under the clothe of estate changeth his name, being termed *it may please your grace*, yea, and with solemn reuerence, as though he were the prince, soe long as he carryeth the the white rodd which is deliuered to him as his ensigne of authority.

How there is a high steward made in parliaments, and sometyms in the household, as I myselfe haue seene the late lord William earle of Penbroke in our late queene Elizabeth's time, vnder whose command the inferiour officers of the court were, I omit.

Soe will I also of the authority of stewards of courts, of feigniories, and mannours, whose court-rolls haue such power, as I haue heard, yea and knowne, that a steward in his court may fayre disherite the lord of his land by an entry of *fursum reddidit*, &c.

N^o X.

Certaine remembrances touching the same.

By ANONYMOUS.

THE seneschallsy, or high stewardshipp of England is knowne to be the greatest office of the land, by reason of the authority it hath ouer all other offices, which since the Norman conquest hath long continued by descent inheritably in the family of the auncient earles of Leicester, which was after translated to the house of Lancaster, and by king Henry the fourth of that stock, when he had obteyned the crowne, was incorporated into the same,

as all the honours, lands, and hereditaments of that house were. For the playner manifestation whereof it will serue well to the purpose, before the office itselfe be described, to shew the first institution thereof, and to recount in order the succession of the officers, whilst it passed inheritably.

It is therefore to be vnderstood, that amongst the persons of chiefest account which entered this kingdome with duke William of Normandy, and were assistants vnto him in the conquest thereof, one Hugh of Grentmeisnell, a baron of Normandy, was of speciall reckoning, whose father Robert of Grentmeisnell, one of the chiefest noblemen of all Normandy, reteyned at home with him for his owne comfort, and for the preservation of his stock, the elder of them named Robert, who succeeded him in all the inheritance of Normandy; but sent with the duke his second sonn called Sir Hugh of Grentmeisnel, who soe demeaned himself in the enterprise, that when by conquest and strong hand the whole kingdome was subdued by the Normans, their duke regarding the good seruice of those that aduentured, and laboured with him, forgott not the prayse-worthy deserts of this nobleman, whom therefore he rewarded liberally with sundry great territoryes and portions of land in many shires of the realme, as namely with the great lordships of Petworth, Mereston, Queninton, Westone, and Wilcote in Gloucestershire, with diuers lands in Ferendone, Merfitone, Thorp, Welintoun, Stauerton, Mereford, Neuborle, Middleton, Sutione, Bieuld, Wodefort, Egedone, and Cernelton in Northamptonshire, with Wichingstone and Hinckley in Leicestershire, with diuerse lands in Edwolton and Sandiacre in Nottinghamshire, and with Ley in Suffolke, as appeareth by the record in the exchequer commonly called Doomesday. Moreouer he made him high seneschail or steward of the whole kingdome according to the Norman use: [a dignity neuer heard of in this land before] and did further aduance him in marriage with a great lady inheritrix of sundry possessions, named Adalifa or Alice, on whom he begate two two daughters his heyres, the elder of them, called Petro-

nilla

nilla or Pernell, was married to Robert earle of Leycester, surnamed avec les Blanch-maines, that is, Robert with the white hands, that was the sonn of Robert Le Bossu earle of Leycester, who was sonn vnto Robert of Beaumont lord of Pontadomare, and earle of Mellent in Normandy, brother to Sir Henry of Neubourg the first earle of Warwick after the conquest; vnto whom the sayd Pernell brought the one moyety of her father's estate and possessions, and withall for increafe, because she was the elder daughter, together with the honour and lordship of Hinckley, the office of Senechalsey or high stewardship of England, which was not partible as the other inheritances were. The younger of the sayd Sir Hugh Grentmeisnell's daughters, called after her mother Adalifa, was giuen in marriage to one Roger Bigott a Norman, with the other moiety of her father's possessions, vnto whom she bare diuerse sonns and daughters, from the eldest whereof, named Hugh Bigott, that was the first earle of the East Angles of this family, conteyning Norfolk and Suffolk, the other Bigotts that were after earles of Norfolk are lineally descended; between which two families contention hath often bin about the office of stewardship, whereof in this place to note what is set downe in the record of the Exchequer called the Red booke, is not impertinent to this purpose, where it is sayd, that on the Sunday before Candlemas day in the 20th year of the reigne of king Henry the son of king John, commonly called king Henry the third, at the coronation of his wife queene Eleanor, that was the earle of Prouince's daughter, Simon Mountford then earle of Leycester and high steward of England lineally descended of the before named Pernell, being ready on the day of the coronation to execute his office of high steward, which by right apperteyned vnto him, was forbidden and gainsayd by Roger Bigott then earle of Norfolke, being descended from the aforementioned Adalifa the younger of Sir Hugh Grentmeisnell's daughters, allaedging that it was his right to execute that office. Which controverfy [as also diuers others there moued] was heard judicially before the king, vnto whom earle Simon replying, answered, that it was true that contention

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tion had bin heretofore moued between their auncestors for the same matter in the dayes of king John, the king's father, which was compounded and pacified for the price of seauen knights, or rather tenne knights fees giuen by the earle of Leycester vnto the earle of Norfolk, who therefore released all his title and right in the high stewardship, whereunto becaule earle Roger of Norfolke allaedged, that there rested of those knight's fees two and an halfe to be assigned vnto him, earle Simon made answer, that he might well recouer them with the arrerages by the laws of the land in the king's court, and ought not therefore to hinder him in the execution of his office, seeing he acknowledged the former accord, and by virtue of the same was already in quiett possession of seauen knight's fees and an halfe; and so was earle Simon by the kings owne doome and sentence admitted to the quiett exercise of the seneschallsye at the same coronation.

And now to retorne where we left. Robert earle of Leycester wedded dame Pernell, and in her right was high seneschall or high steward of England [and was the man for whose greatnes of stomach the walls of the towne of Leycester were razed to the ground, because he tooke part with the young king Henry against his father king Henry the second, as historyes make mention] and begate on her sonns and daughters; and after in king Richard's days the first warring in the holy land, was slaine in the siege of Acon in the yeare of our Lord 1190, whose eldest son Robert, surnamed after his mother Fitz Pernell, was after his death earle of Leycester and high steward of England, of whom many worthy acts are by historyes remembered, boeth of his prowells in the field, and fidelity to king Richard the first, with whom he continued as a most faithful companion during the Palestine wars, was pertaker of his euill fortune, by being there taken prisoner, and compelled to pay for his redemption 2000 markes of siluer, and therefore compelled to sell his castle of Passey in Normandy. But to be brieft, and not to stay vpon the narration of these things, itt serueth onely to the purpose to note, that he was one, of our high
seneschalls,

seneschalls, and dying without yssue of his body in the year of our Lord God 1204, was buried in the abbey of Preux neare Leycester, leauing his two sisters to be his heyres, between whom the whole inheritance was diuided in the days of king John. Amicia the eldest sister was marryed to Simon de Montefort younger brother to Almeric, earle of Eureux in Normandy, and Margaret the youngest was marryed vnto Saher of Quency, whom king John made earle of Winchester, vnto whom she brought the one half of the earledome of Leycester, and of the honour of Hinckley, and among other lands the mannour of Grobey, Quitwikk, Sheepesheued, Hales, Brackley, Southkestan, Finksbury, and Chinommer.

Simon of Montfort, according to the law and custome of the land, was in the right of his wife, being eldest sister, made earle of Leycester, and high seneschall of England in the dayes of king John, but he enjoyed not long those honours, being for his contumacy and disobedience, boeth he and his children, shortly after banished the land, and his honours and possessions bestowed on earle Randolfe of Chester, who held them a great tyme, except only the patronage of the abbey of Preux near Leycester, and the office of the stewardship of England, which the king kept in his owne hands. This earle Simon a great warriour, was head and leader of the young French king Ludouicus forces against the Albigenfes about the citty of Tholouse, where he was after slaine. These Albigenfes, because they began to smell the pope's treachery, tryed to controule the immediate proceedings, and discipline of the see of Rome; the pope therefore recounting them as people hereticall, excited the French king to lay siege against the sayd citty of Tholose, to impugne these Albigenfes his enemyes. But such was the mighty protection of God, fighting for his people against the might of man, that the French could doe noe good with all their engines and artillery against the citty, but were forced to retire with great losse of people, amongst whom, this earle Simon of Mountfort, generall of the army, to whom the pope a little before had given the

earle of Tholoufes land, was slaine with a stone before the gate of the citty, in the year of our Lord God 1219, as likewise was a brother of his in besieging of a castle neare into Tholose att the same tyme. He left two sonnns of great fame, earle Almarick of Mountfort, constable of France, that was taken prisoner in the holy land, and after his Redemption in returning homeward, dyed at Hydruntum in Italy anno 1242: and Simon the younger, that after obeyning the good grace and fauour of king Henry third, whose sister he marryed, was restored to the earledome of Leycester, and to the integrity of his fathers lost honour, and patrimonyes in England. A man he was of great courage and renowne, well experienced in the warrs, and in the matter of gouernment: for long tyme had he bin seneschall, and gouernour of the country of Gascoigne for the king of England his brother in law, which of his owne accord he resigned contrary to the king's minde; that laboured greatly to retayne him in good affection towards him, boeth because he was a man of great power, wise, and valiant, and for that the French laboured to make him their seneschall. But such was this earle's happ, that in the new begun variance between king Henry and his nobles, for not obseruing the laws of the land, especially such new decrees as had binn made at Oxford, for expelling of strangers out of the realme, he was chosen cheife captaine and leader of the nobility. He for the tyme soe much preuayled in the enterprize, that the king was by them taken in the battle neare Lewes in Suffex, togeather with his eldest sonn, and the king of the Romaines, his brother. Howbeit Edward the king's eldest sonn escaping out of their hands renewed the warr, and att Euesham in battle, slew this earle Simon, and deliuered his father from the hand of his enemyes in the yeare of our Lord God 1265, which was in the 48th yeare of the raigne of king Henry the third. Those that tooke part with earle Simon, were disinherited, and their lands giuen to such as stood with the king. Diuerse fledd the realme, and amongst them Simon and Guy, and the other sonnns of this earle, which escaped

escaped into France, and left noe posterity in this land. The king afterwards gaue the earledome of Leycester to his younger sonn Edmond, that was the first earle of Lancaster, and to his heyres, which euer afterwards continued in the house of Lancaster, who bare the title of Leycester earldome, and withall held, and enjoyed the office of the high stewardship of England, vntill the same, with all other the honours, lands, and hereditaments thereunto belonging, were vnited to the crowne in the days of king Henry the fourth being of that stock. Now of late it hath pleased the most noble and virtuous princeesse, queene Elizabeth our gracious soueraigne, to reuiue the honour and title of Leicester earledome in the person of the right noble lord Robert of Dudley, younger brother and heyre apparent to the right noble lord Ambrose, earle of Warwick, and Viscount Lisle, boeth sonns to the high and mighty prince John, late duke of Northumberland, lineally descended, and heire in blood of the bodyes of Robert of Beaumont, earle of Mellent in Normandy, auncestour to the before earles of Leycester, and of Henry of Newburgh, earle of Warwick auncestour to the earles, synce boeth brethren, as before hath bin declared, and liuing in the tyme of the Norman conquest, as more plainely is shewed by pedigree deduced at the end of this treatise.

Thus much being declared by way of a preface, or ingression to the matter in hand, and to shew that the office of high stewardship of England hath heretofore passed inheritably in diuerse families, as other great offices haue done, it remayneth now to be declared, what these stewardships are, with the authorities and prerogatives to them belonging, and to produce such notes and obseruations, as are extant touching the same.

And to begin with the cheifest, the seneschalsy, or stewardship of England; as it is not to be doubted of, but that it tooke beginning from the Normans, and was by them first established in this land after the great conquest, and victory ouer the English Saxons in the yeare of our Lord God 1066, by their example of their home concernment,

and government in Normandy, where the duke had under him for his cheifest officer, a seneschall, or steward : soe cannot the right of this office be better, or in breifer sort described, then by setting downe the state of the dukes stewards faithfully, in such sort, as it is to be seen written in the old customary booke of the duchy of Normandy in these words.

In tymes past, there was wont to wander throughout Normandy, a certaine iusticiar, greater than those before mentioned, who was called the prince's seneschall, or steward. He was wont to perfect or amend that which the other iustices had left undone : he kept the prince's lands, the laws, or rights of Normandy : he caused to be amended and obserued, all that was not rightly done by the baylisfe, whom he remoued from the prince's seruice if he saw it expedient soe to doe : he was wont to visitt the prince's forrests and inclosures, to keepe courts of the forrests, to inquire how they were used ; their customes he commanded to be obserued, deliuering right to euery one as the same by antiquity grew due, or by charter had bin confirmed vnto them, soe discretely concerning the prince's rights, that in the obseruation of them he notwithstanding hurt none of his subjects ; such as vpon diligent inquiry he found faulty, and to forfeit within forrests, either in trees, or in wild beasts, or in free-fowl, he was wont to punish by the purse, or for want of ability that way, by long imprisonment : he cheifely gaue his mynd to keepe the countrey in peace, and soe wandering hither and thither throughout Normandy once euery three years, did visitt all the parts of the balliages thereof. To him belongeth to make enquiry in euery balliage of the excess, or wrongs done by the vnder iusticiars, or likewise of common robberyes, of violent desflourers of virgins, of murders, of burning, and of all those things which belong to the pleas of the sword, whereof peace or reformation hath not bin had in court : of all other criminall facts, he likewise diligently searched, and vpon inquiry caused justice to be done throughout : he caused inquiry to be made of trees not digged vnder ground, and wrecks cast upon the land,

land, and other the prince's rights; the removing of waters, and the stopping and hindering the courses thereof did he reduce to the old forme, that their passage might be hurtfull to noe body; if any man were minded to turne the course of any water running throughout his owne ground, the banks whereof on either side were situated within his owne fee, he might lawfully doe it, so as the same water, when it passed out of his ground, might be conveyed into its old channel without any man's hurt or hindrance. It is to be vnderstood notwithstanding, that none may lawfully stopp the course of an ordinary running streame within his banks, or dykes then from the rising to the going downe of the sunne. Neither may any man stay the course of waters with any new ponds, dykes, or sluices, but shall permitt them to turn their course, least the mills standing vpon their streames, or men in their assayres, as tanners, dyers, or such like should hereby suffer losse and detriment. If any shall stay them for the filling vp of his pooles or ponds, they shall be bound to restore such losses, as the millers, or others living by the passage of those waters shall haue susteyned by the withholding of them, and the waters shall be suffered to runn their accustomed course. Noe man may erect a fishing, or erect a mill, unless the water-banks on either side be within his owne fee, wherein he hath liberty. Weares, or other such like things for fishing may not be made in running streames, because by them oftentimes the waters are corrupted. Yet notwithstanding they may bring the waters by ditches, or trenches out of the running river vnto their grounds, soe as the same returne not back into the running streame.

It belongeth also vnto the steward to cause the bounds and limitts of townes and villages, and the streetes and paths to be renoaked to their auncient estate, and to see that old and accustomed highways be opened. Noe man may in these cases alleadge for excuse, any let, or hinderance, wherefore he ought not to make amends to the prince. As for towne ditches, or common streetes, which serue to

if

if there be any usurped or encroached vpon, they ought to be restored to the common benefitt, and they that doe occupy them, ought not to escape punishment.

All these things apperteyne vnto the office and charge of the seneschall, for the due execution whereof there needeth neither plea nor affize: but wheresoever hee found cause, he did therein and provided as he saw needfull and expedient.

Thus farr forth is the high steward's office described in the old customary booke of the dutchy of Normandy, from whence came the first institution of the same with vs in this kingdome, established noe doubt with noe less authority, and priuiledge here vnder the kings of this land, then the same was then practised vnder the dukes of that dutchy, whereof there is an especiall title written, though nothing clearly, amongst other matter in an old booke of parchment, belonging, as it is sayd, vnto the learned lawyer and skilfull antiquary Mr. William Fleetwood, esqr; one of the sergeants at the law, and recorder of the citty of London, which word for word followeth.

Here is to be shewed who is to be high steward of England, and what his office is.

The seneschallsye, or high stewardship of England belongeth vnto the earldome of Leycester, and of old tyme did thereunto apperteyne, and it is to be vnderstood, that it is his office vnder and immediately after the king, to oversee and gouern the whole kingdome of England, and all the officers of justice within the sayd kingdome in tymes boeth of peace and warr, in manner following.

The manner how, and when the lord high steward ought to exercise his office by duty, and the oath of fealty is such: when euer man or woman shall come vnto the king's court, in whatsoeuer court it be, and possibly vnto the king himselfe, to seeke for redress against injury done vnto them, and he or she not being able in due season to obteyne remedy, then the high steward of England ought, and is bound to receaue their petitions and complaynts, and

and to keepe them untill the next parliament thereafter to be holden, and to assign vnto such complaynants, if he thinke fitt, a day wherein they may exhibite and prosecute their petitions, and in full parliament, in the presence of the king, to reprehend or blame that officer, or those officers who euer they bee, that soe haue fayled in doeing of iustice, and those thereof to call to account, vnto whom in such cases every one throughout the kingdome is bound to answer, the king onely except. If the chancellour of England haue fayled of making originall remedy and amends, and the iustices, treasurers, barons, and chamberlaines of the exchequer, steward of the king's house, escheatours, coroners, sheriffes, clarkes, bayliffes, and other officers, of what place or records soeuer they be, in their processes, judgements, executions of judgements, and justice to be made to the favour of one, and los of the other party, for gifts, bribes, or other procurements, shall fyle, or giue ouer at the least ways; if any iusticiar, when as both parties pleading before them shall stand in judgement, shall by such false procurements deferr judgement contrary to justice, and the laws and customes of the land; if then the chancellour of England, or any other of the king's officers, in such case, shall alleadge in parliament, and say for their excuse, that in that case such hardnes and doubtfullnes of the law, and right, did arise when the same was heard and proponed before them, that neither he nor the court of chancery, or any other courts wherein he is an officer, were able or knew how to attaine vnto the safe determination of the right, then shall he declare and open the same ambiguity and doubt in parliament. If then it be found, that the law was doubtfull in that case, the chancellour, or other officers shall be held accused, and then shall the high steward of England, togeather with the constable of England, in the presence of the king, and other of the parliament, make choyce of siue and twenty persons more, more or lesse, according as the case shall require, togeather with such other cases in the parliament rehearsed, amongst whom shall bee earles, barons, knights of the shire, citizens, and burgeses, who

there shall ordaine, agree vpon, and establish remedye by law in all such cases for euer after to endure. And those laws shall be recited, written, and allowed in full parliament, and sealed with the great seal, and delivered forth to all places of law and justice from thence forward, to be holden for laws, and in publick places, where it shall be thought expedient, they shall be proclaymed and divulged: whereas all other common laws, and chiefly statute-lawes throughout the whole kingdome, ought to be publickly proclaymed.

If it soe happen that there was in such like case, either common-law or statute-law, soe that the king's steward and others of the parliament may vnderstand and perceauce, that such default and delays in proceses and judgements doe happen by such officers, when as the deceit and malice of such officers hath openly and often before been apparent, then then shall he be remoued out of his office, and some other fitt officer shall be put in his place. If they shall presume against the justices and officers, or by excusing themselves, shall say, that they haue not heretofore knowne themselves, and the courts whereby they are in such cases to be deliberate, and take aduiseement; then shall they be admonished by the steward on the behalfe of the king and parliament, to study and search better the common laws, that noe such ignorance nor negligence be found in them in the like cases afterwards. If they shall happen to offend in the like againe, they then shall be put out of their offices, and other discreeter and more diligent persons shall by the king and his counsell be assigned in their roomes.

Likewise it is the steward's office [if the king haue euill counsellours about him, that aduise him to doe things tending openly and publickly to his dishonour, or to the disinheriting, and publick hurt of his people] for the steward of England, taking with him the constable, and other great estates, and others of the communalty, to send to such a counsellour, forbidding him in such sort to leade and counsell the king, and of such his euill counsell he shall make rehearfall, injoyning him to depart from the king's presence, and longer not to abide with him to his dishonour,

dishonour, and the publick hurt as is aforesayd, which if he shall not doe, they shall send vnto the king to remoue him from him, and to giue noe more eare vnto his counsell, for that amongst the people he is esteemed to be an euill counsellour between the king and his subjects. If hereupon the king doe not put him away, againe, and often shall they send, as well vnto the king as vnto him: if at the last neither the king nor such counsellours of his haue regard vnto the messages and requests made vnto them, but shall refuse to doe thereafter, then for the weale publick it is lawfull for the steward, constable of England, noblemen, and others of the communaltye of the realme, with banner in the king's name displayed, to apprehend such counsellour as a common enemy to the king and the realme, to committ his body to ward vtill the next parliament, and in the meane tyme to seyeze on all his goods, lands, and possessions, till judgement be pronounced of him by aduice of the whole kingdome in parliament, as it happened vnto Godwyn, the earle of Kent in the days of king Edward the confessour, next predecessour to William duke of Normandy, conquerour of England, who for such euill acts, and counsell of his, was deprived of his earldome, which escheated to the aforesayd king. Notwithstanding at the king's suite, and by the noblemen's permission, Godwyn came againe to England, and did after forfeit as before. And as it happened likewise vnto Hubert de Burgh, earle of Kent in the tyme of king Henry the third, that was sonn of king John, who for his euill deeds and bad counsell was apprehended, and by the high seneschall, and other peeres deprived of his earldome by the allowance and consent of the whole parliament. So likewise did it befall vnto Pierce of Gaueston, who in the days of king Edward the sonn of king Henry, for such his euill acts and counsell was banished out of all the king of England's dominions, as well on this side as beyond the seas, which Pierce afterwards by the king's meanes, and the permission of the nobility returned into England, and had of the king's graunt the earldome of Cornwall; but was

after that for his euill deeds and counsell banished the realme againe by the nobles and commons, and had his sayd earledome escheated vnto the king: but he returned afterwards without the noblemens leaue and consent, and did resort and associate himselfe to the king, as before tyme he had done, which when the high steward, constable, and others of the nobility vnderstood, hee was by them apprehended and beheaded att Blacklow in Warwickshire, as a publick enemy to the king and the realme. Soe haue you as much as in the sayd old booke is to be seene touching the office of the high steward.

After the death of any king or queen absolute of this land, the high steward of England by virtue of his office sitteth judicially, and keepeth his court in the white-hall of the king's pallace att Westminster, neare vnto the king's chappell, and there receaueth the bills and petitions of all such of the nobility and others, as by reason of their tenure, or otherwise, claime to doe seruices att the new king's coronation, and to receaue the fees and allowances therefore due and accustomed. Thus did John duke of Lancaster, earle of Leycester, high seneschall of England at the coronation of king Richard the second, and Thomas Percy earle of Worcester, who exercised the same office at the coronation of king Henry the fourth, as substitute and deputy to Thomas the sonne of the sayd king Henry, then being very younge, vnto whom his father had assigned that office, being parcell of his owne inheritance; who before he had attayned the crowne, was not onely duke of Lancaster, as his father John of Gaunt had bin, but also as earle of Darby, Lyncolne, Leycester, Hereford, and Northampton, and by the earledome of Leycester, inheritably also lord high steward of England.

Synce the tyme the sayd office hath bin extinct in the crowne, by the descent of the same vnto king Henry the fourth, as heyre vnto dame Blaunche his mother, daughter, and heyre vnto Henry duke of Lancaster, earle of Leycester, and high steward of England, experience shews, that vpon the arraignment and tryall of any peere
of

of the realme, that is to say, duke, marques, earle, viscount, or baron, or of any of their wiues or widdows, vpon indictment of treason or felony; the king vseth to grant the office of the stewardship of England *pro illa vice tantum* to some peere of the realme by letters patents; the tenour whereof hereafter ensueth, who, instead of the lord high steward that by auncient law hath bin holden for a competent and indifferent judge between the king and such peere, ought and hath always used to bee judge, and giue sentence of acquittance or condemnation vpon the peere arraigned.

The tenour of the Patent.

Regina, &c. præclarissimo consanguineo & consiliario nostro A. B. &c. salutem, sciatis, quod cum G. D. Marchio, &c. indictat. exist. &c. Ac pro eo, quod officium seneschalli Angliæ, cujus presentia pro administratione justitiæ, & executionis ejusdem in hac parte fiend. requiritur, ut accepimus, jam vacat, de strenuitate, fidelitate, prouida circumspeccione, & industria vestris plurimum confidentes, ordinauimus, & constituimus vos ex hac causa seneschallum Angliæ, ad officium illud cum omnibus eidem officio in hac parte debita pertinent. hac vice gerend. occupand. exercend. dantes & concedentes vobis tenore præsentium plenam potestatem indictment. prædictum cum omnibus idem tangent. a præfact. justiciar. nostris recipiendi, & inspiciendi, Ac ad certos diem & locum, quos ad hoc prouideritis, ipsum marchionem, &c. coram vobis euocand. & ipsum super inde audiend. examinand. & respondere compellend. ac sine debito terminand. Nec non tot & tales dominos, proceres, & magnates hujus regni nostri Angliæ, ejusdem marchionis, &c. & aliorum pares, per quos rei veritas hac in parte melius sciri poterit, ad diem & locum prædict. ex causa prædicta coram vobis comparere adstringend. &c.

Thereupon the lord high steward directeth forth a precept to the justices, before whom the indictment is taken, willing them to certify the sayd indictment at a day and place by him assigned, and doeth likewise direct another

precept to one of the serjeants att armes for the summonition of the peeres against the day of tryall, in these words.

A. B. Comes, &c. I. N. seruienti dominae reginae ad arma salutem. Tibi praecipio, quod tot ac tales dominos proceres & magnates hujus regni Angliae praedictae C. D. marchionis E. & aliorum pares, per quos rei veritas hac in parte melius sciri poterit, quod ipsi personaliter compareant coram me apud Westmonaster. xxviij. diei Junii, &c. ad faciend. ea quae ex parte dominae reginae tunc ibidem in praemissis enumerant, &c.

The like precept doeth he also send to the lieutenant of the Tower of London, for the bringing forth of the peere being prisoner, to his tryall and judgement.

It appeareth, that at the common law, before the xxth yeare of king Henry the third, a subject hauing title to lands which are in the king's possession, might haue a writt to the sheriffe of the countrey, where the lands doe lye, against the king, after this manner.

Precipe. H. regi Angliae, quod reddat. s. 9. centum, acras terra in d. &c. But whither the writt should be awarded vnder the teste of the high steward and constable of England, that is to be doubted.

*Touching the office of the lord steward of the
queenes household.*

*Of the lord stewards office of the queenes house, being thoroughly well known to the chief officers of the household, it seemeth needlesse to sett downe any notes or obseruations at all, by reason of the daily and continuall execution thereof still in practice. Howbeit, because there is left vnto vs from elder ages, a forme thereof still in writing, greatly to be regarded euen in these our days, this place serueth fitly for the exemplification of the same in such sort, as it is sett downe in an old booke of record, called *Domus regis Angliae*, preserved in the counting-house of the household, wherein the whole state of the king's house is orderly described; and this office, amongst the rest, after this manner ensueing.*

The

The steward of the king's household.

The steward of the king's household receaueth his charge of the king's high and proper person, and the household staffe in these words following, *seneschall tennez le baston de nostre maison*; by which there is forthwith a statute made, and therein it is ordeyned, that the lord steward of the house shall warrant afterward the marshallsee, that is, the court of the household, of which he is a judge of life and limbe: and except in those cases, the treasurer, comptroller, cofferer, two clerks of the green-cloth, and the cheife Clarke of comptrollment, for any matters else done within the household, or apperteyning thereunto, sitt with him att the boorde of dooms, that is att the greene-cloth in the compting house, as recorders and witnesses to the trueth.

The state of all this excellent household is wholly committed to be ruled and guided by his discrecion, and all his commandements in court are to be obeyed and observed.

Also within the household, except in the king's chamber, he is always to be serued couered, out of the king's presence, whatever great estate else be present, as with a cup, a cup-board, and dishes, but non assay.

Also while he is present in court, there ought no new commandement nor charges of officers, or any other persons to be made without commandement, first of his person for the officers most sure discharge.

Also in the household's rules and judgments he representeth the king's estate: his staff is taken as for a commission.

Also he may in household, of his power, annul any custome [not meddle with worship, or profit] or change and erect anew such as seeme vnder his wisdom, by aduise taken att the compting boord, for the better, and to the king and his household of more honour and profit.

And in that he is head-officer, he giueth example to all other to be of gouernance, with an ordinate rule to be contented with moderate costages within the court in liveryes and

and seruices, taking dinners and suppers in the hall, or in his chamber, as often as it pleaseth him to search and see the good rules and the directions in them.

Hee hath daily in the hall eating, one chaplain, two esquires, and foure yeomen, and in chamber daily for his breakefast, and his chamberlaine's meate, and supper, and livery for all night, eight loaves, foure mels of great meate, two rewards of roast, two pitchers of wine, six gallons of ale; and from Allhallowntide vntill Easter one torch, to attend upon himselfe, one tortois to fetch his liverye by, three perchers of wax, six candles of waxe, eight candles of tallow, foure faggotts, litter, and rushes all the year of the sergeant vsher of the hall and chamber: and after winter season foure shides, two faggotts, and when him liketh, to haue more largely in any thing, then his chamberlaine that doeth fetch it, or receaue it, must record thereof by taillee, or bill in the counting-house.

Also the steward taketh of the compting-house for his fee at Easter and Michaelmas, twenty markes, and for his robes for winter and summer at the feasts of Christmas and Whitsonide, sixteen markes; and for his napery at the foure feasts of the year by euen portions, three pieces of linnen cloath in the great spicery, or in money therefore in the compting-house, in all thirteen pounds, one shilling, and four-pence.

And he hath one yeoman of his chamber still abiding, whilst himselfe is out of court, to keepe his stuffe, taking for his livery, daily one caste of bread, two messe of great meate for noone, and at night one gallon of ale.

The steward and treasurer of this honourable household represent within it the estate of an earle. Item, the steward and treasurer, or one of them, is bound to be in the compting-house at the awaight of the daily accompts of the household: and by the writing of noble king Edward the third's statutes, in case it pass for lack of them three days vnaccompted, then they two shall acquite the costages of the king's household for one day, of their owne proper costs. The steward and treasurer make warrants yearly

att Michaelmas to the cheife butler of England, assigning him how much wine, and in what place he shall lodge the same for the yeare following, for the daily expence of the household, which hath and must with good ouersight be sure of three hundred tunnes. For other things looke into the statute of noble king Edward, &c.

Thus much out of the booke called Domus regis Angliae.

Sir William Stamford the judge in his booke of the pleas of the crowne vnder this style; *qui iugerá treason*, &c. who shall judge of treason and felony by virtue of their offices with noe commission, and who doth not mention the statute made anno 33 Henry 8. cap. 12. whereby it is ordeyned, that the great master or lord steward of the king's house onely, and in his absence the treasurer and comptroller of household, with the steward of the marshallsye, or two of them, whereof the steward of the marshallsye to be one, may without commission heare, and determine of treasons, misprision of treasons, of murthers, manslaughteres, and bloudshed perpetrated within the king's house; sayth; for these, are great and choyce personages, in whom the king repositeth such trust, that he hath ordeyned them especially for the safety, and good gouernment of his realme and household.

More hereof is to be read in the volumes of the statutes 25 Edward 3. cap. 21. 3 Henry 7. cap. 14. 33 Henry 8. cap. 12. wherein the præeminencies of the lord steward of the king's household are rehearsed, needlesse therefore in this place be recited.

Seneschalli Angliae.

Willielmus filius Osberni, comes Herefordiæ.

Henricus Bellus-Clericus, filius regis Willielmi conquestoris.

Hugo Grantemeisnell, dominus & baro honoris de Hinckley.

Willielmus Blanchmaynes, comes Leycester.

Robertus Fitz-Pernell, comes Leycester.

Simon de Monte-forti, comes Montis-fortis & Leycester.

Ranalphus comes Cestrie.

Almaricus de Monte-forti comes Montis fortis & Leycestr.

Simon de Monte-forti junior comes Leycestr.

Edmundus, H. 3. filius junior, comes Leycestr. & Lancastr.

Thomas comes Lancastr. & Leycestr. filius prædicti comitis Edmundi.

Henricus comitis Edmundi filius, ac frater et hæres, Thomæ comitis, comes Lancastr. & Leycestr.

Henricus, comitis Henrici filius, dux Lancastr. comes Lancastr. Leycestr. Linc. & Derby.

Johannes Gandavus a loco natiuitatis cognomentum adeptus, regis Edwardi 3ij filius, ducta in vxorem Blanc. filia Henrici ducis secundo-genita, & altera Matilda foror ante-genita sine prole defuncta, jure vxoris, factus est dux Lancastr. comes Leycestr. & senescallus Angliæ.

Edmundus de Langley filius regis Edwardi 3ij. dux Ebor. & comes Cantebrig.

Thomas de Lancastria Henrici quarti regis filius.

Richardus de Bello-campo comes Warwic.

Humfridus de Lancastr. Henrici sexti patruus.

Humfridus Stafford dux Buckingham.

Richardus Neuill comes Warwic. & Say.

Henricus Stafford dux Buckingham.

Henricus Stafford dux Buckingham.

Jasparus de Hatfield dux Bedford. & comes Pembroc.

N^o XI.

The Antiquity and Office of the Constable of England.

By Sir ROBERT COTTON, Bart.

IF wee curiously will looke into the roote of this question, we must trauell out of our owne countrey, and there examine the office and name before it spread to soe reuerent authority. The etimologists all consent that it grew from *comes stabuli*, as an office, that *præst omnibus copijs imperatoris*, or *imperatoris equitatu aulico*, in which sense the constables haue held boeth functions. These offices haue in their vnion and separation varied their name often. It was *tribunus celerum* vnder the kings, as Joachimus Perionius concludeth; then *præfectus prætorius* into which that former suffered vnder the emperours as Raynutus sayth. It fell in office and name then with the empire, respiring a little vnder the French kings, and vnder the name of *comes stabuli*; about the tyme that it grew most, Charles the Great contracted it to *constabilis*, as Aymonius and Procopius write it. Our tymes make it *constabularius*. The antiquity I reade not before Chilpericus, who about the yeare 574 had *Cupianus comes stabuli*. From that age it fayled not in France, whence we receaued it with our conquerour, the Saxon age giuing vs noe such dignity. The first I fynde here so called vpon good warrant is Robert de Oilly constable to Maud the empress, who as such is wittness to her deed. Milo she made constable of England, whom Stephen a while displaced, yet foure sonns he had succeeding officers, and his daughter Margarett gaue it in inheritance to the Bohune family for many ages.

That the office, after the empire fell, did onely regard the king's stable, will appeare directly by Procopius; and that the *comes stabuli* neuer out of duty intermeddled with the king's army of old, but by commission, is gathered out of Aymonius. *Chilpericus rex lendigasum comitem stabuli præfecit expeditioni*, and after *Alagiso camerario, Cerloni comiti stabuli, Worood comiti palatii præcepit, ut sumptis Saxo-*

nibus flauorum comprimerent audaciam. Soe it was, not out of office, but joynt commission, whereby also sometymes they haue had the admirall's power. Soe Charles the Great sent Richaredum *comitem stabuli cum classe in Corsicam*, sayth Turpinus in his life. And that it was not of such dignity as after it grew to, will appeare; for Hincmarus liuing 800 yeares agoe, giueth itt, amongst the officers of the king's household, but the next precedent place to the *venatores*. It thus stayd there vntil Hugh Capett neglecting the *praefectus palatii*, adjoynded that place to the *comes stabuli*, and entered his authority in the household; but his rule in the field was not before Philip the First, who made Fregerium his *comitem stabuli, praefectum rei militaris*; euer synce in this affayre he is *secundus a rege*, and hath the custody *regalis gladij*; hence we may now gather it to be growne, to be as the *praefectus praetorius*, the sword being the ceremonious instrument of boeth their creations. Of this Pliny in his panegyrick to Trajan speaketh in the person of the emperour making a pretor. *Accipe hunc ense, vt si recte imperauero, pro me, sin secus in me vtaris.* This office hath not bin peculiar to France; for Michael Palaeologus was *magnus constabilius* in the easterne empire, as Nicephorus writeth; and Aistaulphus the Lombard dying, Desiderius succeeded, *qui comes stabuli fuerat*, sayth Aymonius. From France, noe doubt, we receaued it growne to his best strength; his authority being with vs in peace, to attend the next person to the king; in his court to hold plea of such cases wherein the subject had by the common law noe remedy: which by praescription more largely they might haue done vntil the statute 13 R. 2. As in actions grounded from contracts beyond sea. 13 H. 4. fol. 5. In his court the marshall is his officer, holding such relation of ministry vnto him as the sheriffe to the judge. In publick warr seruice his direction leadeth the king's army, and therefore in an old discourse of the king's chiefe officers, his place is the first ranke, the marshal next, and last the admirall. In priuate warr, as combat, his office is by Thomas of Woodstock, once that officer in his discourse to R. 2. and by

Hill a herald of armes to H. 4. thus deliuered. The constable must examine the cartell of defyançe, that there may be just cause of fight. The place is at his appointment. His is the judgement, and his seat next the lists. To renew or deferre the combate is his duty. The defendant hath noe counsell from his assignement. He meeteth the appellant, and giueth him entry into the lists. The weapons he examineth, and cutteth them lawfull. Before him boeth parties make thrice oath in French and English; after the first boeth combatants giue each the other his right hand, joyning their left hands on a misfall, whereon the second oath is taken. After the third oath the mareschall commandeth all to depart the lists except his two knights, and one of the marshalls. He deliuereth a launce into the hands of either party, and after his thrice pronouncing *las-fies le alar* the parties incounter. The king, if present, is judge, if absent, the constable, come son vicar generall. His fees is armour and ornaments that fall from the combatants, and the spoyle of the vanquished, the victour receauing from him a patent of victory. The constables office in triumphs, I leaue yee to learne of the officers of armes, to whom it concerneth properly.

N^o XII.

Of the same.

By ANONYMOUS,

First for antiquity.

ALFGARUS Stallere was the first constable in England by Mr. Francis Thinn's collection in Hollingshed, p. 886, where he is thus named, viz. Alfgarus Stallere constable to Edward the Confessour, and continued till the Normans came.

Hereunto accord the auncient records of the priory of Lanthony in these words, viz. Be it remembered, that in the tyme of the conquest of England the great lord called

Algere Staller was earle of Essex, lord of Plesseys, and constable of England. After whom Walter, sonn of Roger of Gloucester, was made constable of England by the will and consent of the king and his lords then being; and the sayd Walter to haue the said constabulary for him and his heyres for euer. After him Milo, sonn of the said Walter, was constable of England, the which Milo king Henry the sonn of William the conquerour did create earle of Hereford, and gaue to him and to his heyres all the forrest of Dene with the constabulary of England. The which married Sibille the daughter of Barnard lord of Newmarkett, with whom he had the lordshipp of Brechnock, and founded this house of Lanthony next Gloucester the 25th day of May in the yeare of our Lord M,C,XXXV. the first yeare of the raigne of king Stephen, and lyeth buryed in the midst of the chapter house of Lanthony aforesayd, with his wife Sibille on his right side, att the feete of Henry her second sonn. By which record and pedigree the same office is in that tyme deduced downe lineally to Edmond earle of Stafford in the right of Anne his wife, daughter and heyre of Thomas of Woodstock duke of Gloucester, by Elianor his wife, eldest daughter and heyre of the tenth Humfrey de Bohun earle of Hereford, Essex, and Northampton, lord of Brecknock, and constable of England. And for the last constable of England, I must also end, as Mr. Thinn doeth, with Edmond the last duke of Buckingham, according to his stile made ouer the top of his castlegate of Thornebury in Gloucestershire, which he began to build not many yeares before his end, viz. " this gate was begun anno domini 1511, " and anno regis Henrici octauī 2. by me Edward duke " of Buckingham, earle of Hereford, Stafford, and Northampton, high constable of England."

For the authority, jurisdiction, and honour of the office, and etimology of the word, I will leaue it to diuerse present of greater reading, who can best deale therewith.

Authority

Authority and government in peace.

I will adde, that the constable of England seemeth to be a great officer and conservator of the peace of the realme, by his place *ex officio*, as Mr. Lambard sheweth in his booke of justice of peace, in the title, of such as had the conservation of the peace by the common law, fol. 11. cap. 3. shewing there what he may doe in that behalfe.

Jurisdiction for justice and judgement in peace and warre.

The constable is also an high and a speciall judge, determining matters of great importance and excellency, for the which it seemeth he had power by his office of auncient tyme, and confirmed by the statute of 13 R. 2. cap. 1. in these words, viz. to the constable it apperteyneth to haue cognizance of contracts touching deedes of armes, and of warr out of the realme, and also of things that touch warr within the realme, which may not be determined nor discussed by the common law, nor other vsages and customes to the same matters perteyning, which other constables heretofore haue duely, and reasonably vsed in their tyme, &c.

Honour and dignity as well in counsells and assemblys as otherwise.

His place was of greatest honour and esteeme, and in precedence high, which the statute of 31 H. 8. cap. 8. doeth demonstrate, and rather, as it seemeth, qualify from that which had bin aunciently then otherwise, allowing the constable being of equal ranke and degree of honour, to haue seate first of these six great officers, viz. constable, earle marshall of England, lord great chamberlayne of England, lord admirall of England, lord steward or great master of the household, and lord chamberlayne of the household, by which act it seems the lord priuy seale gained place, and was sett higher then aforetyme.

No XIII.

Of the same.

By ANONYMOUS.

TO the constable it perteyneth to haue cognisance of contracts touching deedes of armes, and of warr out of the realme, and also of things that touch warr within the realme, which may not be determinied nor discussed by the common law nor other vsages, and customs to the same matter perteyning, which other constables heretofore haue duely and reasonably used in their tyme, joyning to the same, that every plantiffe shall declare plainely his matter in his petition, afore that any man be sent for to answer thereunto. And if any will complayne, that any plea be commenced before the constable and marshall, that might be tryed by the law of the land, the same complaynant shall haue a priuie seale of the king, without difficulty, directed to the sayd constable and marshall, to surcease in that plea till it be discussed by the king's counsell [if that matter ought, and of right pertayneth to that court] or otherwise to be tryed by the common law of the realme of England, and also that they surcease in the mean tyme, anno 13 R. 2. cap. 2.

Because of diuers great inconueniencies and mischeifes that haue happened diuers tymes by reason of diuers appeales made within the realme; it is, &c, that from henceforth all the appeales to be made of things done within the realme shall be tryed, and determinied by the good laws of the realme made and used in the tyme of the king's noble progenitours; and that all the appeales to be made out of the realme of England, shall be tryed and determinied before the constable and marshall of England for the tyme being. And moreover it is accorded and assented, that noe appeales be from henceforth made, or in any wise pursued in the parliament in any tyme to come anno 1 H. 4. cap. 14.

One

One Adam Pounteney sued against Matthew Borney, knight, in the court of the constable and marshall, and demands anno 1020, by an obligation which he sheweth forth, bearing date in Bourdeaux, which is in Gascony, and the obligation recites, *quas de mutuo*, &c. and declares out of his bill, a libell how he had payd the sayd summe to the souldiers of the sayd Matthew in Burdeaux, and shews how every summe was payd, and to what persons. And vpon this in the tyme of king Richard, a letter vnder the priuy seale was directed to the court, to surcease by force of the statute made of the jurisdiction of the same court in the 13th yeare of the same king. Vpon which the plaintiffe sued vnto the counsell of the sayd king, and a writt was graunted to proceed, wherefore they proceeded forwards in the plea, vntill he had judgement to recouer. And note, that the procedendo made mention of all the names of the bishops and knights which were of the counsell of the sayd king; but it made noe mention, that any justices were in presence att the tyme that this procedendo was graunted. And now lately John Tiptoste and others, which were tenants of the land of the said Sir Matthew sued a letter vnder the priuy seale directed to the said Constable, &c. to surcease from execution; and vpon this matter, suite was made to the counsell of the king, and by the counsell committed to the justices. And now in the Exchequer chamber Fulthorpe, knight, which is the vnder constable, sayd, that if this matter be not determinable by the common law, then is it remittable vnto our court againe; for the statute wills, si, &c. Soe doeth not this poynt, wherefore, &c. Therning: noe, Sir, and we shall see if it perteyned to your jurisdiction; for if it doe not apperteyne to your court, nor to the court of the king, then you shall not haue a procedendo, as are many cases in our laws, in which it behooueth a man, that would haue action of them, that he haue a deed to shew, as where debts shall be demanded against the executours, and where a man is to demand land by a formedon in the remaynder. And with-

out

out deed in these cases, and other like, a man shall not haue action in our law, and yet if such actions be conceaued in your court; and a writt of superseas be directed, you shall not haue a writt of procedendo; wherefore neither in this case, and a multo potiore here, because that the plaintiff may well recouer, and haue saued himselfe by the common law at Burdeaux vpon this obligation, wherefore, &c. Gascoigne: truly if this were the first superseas that went forth, a man would not say, that of reason noe procedendo should goe forth. Culpepper: if an obligation were made at Callis, where should this diceret at the common law at Callis. Fulthorpe: we use to pleade the clarks of the same court: if peraduenture Sir Matthew should and should haue nothing in Gascoigne which might be put in execution plaintiffe shall neuer haue aduantage by this suite there made; but our court; for we can make execution. Therning: the same reason when a man of Bourdeaux is bound by an obligation here, and after . . . and leagues noe goods here, per consequence the suite should be made here court, *quod falsum est pur' que*, &c. Fulthorpe: if a man were in the quarters of the bishop of Rome, or in other places, or in pilgrimage, and he borrow goods of his companions, and of this he make an obligation, bearing date then . . . to be pleaded in our court, and if the party defendant doe deny haue noe proofes that will witness this to be the deed of the in our court with the defendant in prooffe, that his sayd suite is true to be greuios, that a man should combat for a debt for . . battell, and combat should be vpon this, that the defendant in his defence. And note, that some men hold diuersely within the power of the king, in which case the suite shall be law; and where it is made out of the power of the in the court of the constable. Jereble sayd, how a leiges of our soueraigne lord the king in the land of of him, that was killed, sued an appeale of his death in here in England, &c. Vide statutum de anno 13 H. 4. C . . .

In an action of trespass brought by John Paston against Ro. Ledham for an assault, and menacing; the defendant, sayes, that the plaintiffe called him traytour *quod mentiris in capite tuo*, and that if he the plaintiffe would appeare . . . that he the defendant would defend himselfe by his hands vpon the . . . during the life of one of them according to the forme of the law same menacing whereof the action was brought, which insufficient in law, because the defendant had alleadged in fact, nor in law, whereupon confessing, or trau Wherefore he amended his plea, and added, that he w sayd defence, then that the plaintiffe should kill him in our law; for by such words noe such plea doeth consequence noe such defence can be made for such constable and marshall, and he shall determine this we cannot take notice, and soe noe such appeale lyes by by consequent noe such defence. And although we should law, as wee shall not, yet it is noe plea, that he sayes that selfe during the life of one of them, the which is not law if they were in the field to fight together, if the one would take ano not lawfull for him to kill him, for he shall be drawne and quartered the king pardon him. In which case he cannot defend himselfe of one of them, *causa qua supra*. Nedham: to this that you take notice of the law of the constable and the marshall is the law of the land, and of our lord the king, but it before the constable and the marshall, but we shall take one be appealed of the death of a man, and he sayes that he such a day, and had him before the constable and marshall fought together in the feild, and so doing there, he hurt justification for our law purque &c. and that it shall bee vnderstood prima facie, that one kills the other, and not that one take the other. Ashton and Moile: we shall take notice of this as of the law of the holy church. Prisot: in the case which Nedham puts, we shall write to them to know whether it bee

37 H. 6. f.
3. and co
tinued fol.
19. 6.

foe or noe, and according to that we shall doe; *quod nota & adjornatur.*

If appeale of murder be brought in the king's bench, and the defendant joyne battell, this shall be tryed before the iustices of the king's bench, and not before the constable and marshall.

N° XIV.

Of the fame.

By Mr. HOLLAND.

27° Octobris 1602.

IT appeareth by Mr. Lambard in his book of the duties of constables, that the name of constable is made of two English words put together, namely koning and stapele, which doeth signify the stay or hold of the king: for by the auncient custome of this realme there is a great officer called the constable of England, and this man had jurisdiction and authority in deeds of armes and matters of warre, boeth within the realme and without. After the statute of Winchester, which was made in the tyme of king Edward the first, did ordayne lower constables of hundreds and franchises, then the other was called the high constable in comparison of the other constables that were vnder him.

I fynd in the exchequer *in libro in quo scribuntur hominum liberationes, qui fuerint cum Rege Henrico filio imperatricis*, that king Edward the third commanded the treasurer and barons of the Exchequer to search, whither Humphrey de Bohun, earle of Hereford and Essex, and constable of England, and his predecessours, of right receaued, and ought foe to doe, in right of his office of constable, two pence of every pound stipendary in the king's host.

Whereunto the barons of the Exchequer did answer, that the earle of Hereford receaued as constable two pence of euery pound stypendarye of euery man of armes in the king's host.

In the tyme of king Henry the eighth the duke of Buckingham did challenge that office, and the case was thus: Humfrey de Bohun earle of Hereford and Essex held the mannours of Hartfeild, Newenham, and Whettenhurst in the county of Gloucester of the king, by the seruice of being lord high constable of England: he dying, left two daughters, betweene whom partition was made of the sayd mannours; and the said office being a seruice by reason of the said tenures, the same descended vnto boeth daughters, to be exercised by their sufficient deputy, while they were vnmarried; but after their marriage the same was onely to be exercised by the husband of the eldest daughter. By the attaynder of the sayd Duke of Buckingham the sayd office came vnto the king, and resteth in the crowne att this day.

Constabularij Angliæ.

Hugo de Mortuomari Dominus de Wigmore constitutus constabularius Angliæ ab ipso conquestore.

Walterus de Gloucestr. constitutus constabularius Angliæ per regem Henricum primum.

Robertus de Oillio Baro de Hocnorton constitutus constabularius Angliæ per Stephanum regem anno 1^o.

Milo de Gloucestr. filius præfati Walteri factus fuit summus Angliæ constabularius post mortem patris sui per Henricum seniore, deinde ad idem officium restitutus apud Bristoll, per imperatricem Matildam, cum primo in Angliam venisset post mortem Henrici regis prætoris sui; deinde per eandem gladio comitatus Herefordiæ cinctus est die sancti Jacobi Apostoli Oxonia, anno Domini 1141. Duxit in uxorem Sibillam filiam Bernardi de Nouomercato, baronis Breconia, & Agnetis uxoris ejus, ex qua genuit Rogerum, Walterum, Henricum, Nicholaum, Willielmum, Margeriam, Bertam, & Lucianam. Fundauit prioratum l'Antonia

juxta Gloucestr. anno 1^o. Stephani regis. obiit in vigilijs
natalis domini anno 1143. Sepultus est in dicto prioratu.

Willielmus de Bello campo filius Walteri de Bello campo vice-
comes Wigmor, factus fuit constabularius Anglia per Step-
hanum regem anno 4. regni sui deposito prius Milone de
Gloucestr. ab officio prædicto.

Rogerus comes Hereford. filius comitis Milonis primogenitus, &
Sibilla uxoris sue, fuit constabularius, & obiit sine prole anno
Domini 1156.

Walterus de Hereford. frater prædicti comitis Rogeri, factus
fuit constabularius Anglia post mortem fratris qui fuit
comes in officio illo dum stetit, & obiit sine prole.

Henricus de Hereforde.

Mahelus de Hereforde.

Willielmus de Hereforde.

Humfredus de Bohun ejus nominis a conquestore tertius, filius
Humfredi secundi & Matildæ uxoris ejus filia Edwardi de
Salisbury, duxit Margeriam filiam primogenitam Milonis co-
mitis Hereford. & sororem dictorum fratrum suorum cujus
jure factus est tam comes Hereford. quam constabularius
Angliæ, ex qua genuit Humfredum de Bohun 4^{um} & obiit.
Et Margeria prædicta obiit. 6 Aprilis anno 1187. Sepulta
est in prioratu prædicto.

Humfredus de Bohun 4^{us}. comes Hereford. & constab. Angliæ
accepit in uxorem Margaretam comitissam Britann. so-
rorem Willielmi regis Scotorum ex qua genuit Henricum de
Bohun comit. Hereford. obiit anno . . . sepultus ut supra.

Henricus de Bohun comes Hereford. & constab. Angliæ filius
Humfredi 4^{ti}. duxit in uxorem Matildam filiam Galfridi
filij Petri comit. Essexiæ, summi Angliæ justitiarum & ha-
red. Galfridi & Willielmi de Magna villa comit. Essex. fra-
trum suorum ex qua genuit Humfredum 5^{um} & Henricum
de Bohun, &c.

Humfredus de Bohun 5^{us} comes Hereford. & Essex constab.
Angliæ, dictus bonus comes, duxit in uxorem primo Matildam
filiam comitis de Ew, ex qua genuit Humfredum captum
in bello contra regem Henricum 3^{um}, quarto die
August. anno 1265. & in Bestaniensi Castello Cestrensis pro-
uin-ia

uincia qui incarceratus obiit, Matildam nuptam Anselmo quinto Mareſcallorum fratri, Aliciam nupt. domino de Tonneio. Sepult. in prioratu predicto.

Humfredus de Bohun 7tus filius Humfredi ſexti, & Alienora quarta filiarum & heredum Willielmi de Breoſa domini de Brecknock, comes Hereford. & Eſſex.

Humfredus de Bohun octavus.

Johannes de Bello Monte dominus de Folkingham.

15 E. 2.

Johannes de Bohun filius Humfredi de Bohun octavi.

Edwardus de Bohun.

Anno 4. E.

Humfredus de Bohun decimus.

3.

Willielmus de Bohun comes Northampt.

Anno 12. E.

Humfredus de Bohun vndecimus.

3.

Thomæ de Woodſtock conſeſſum officium conſtabularij Angliæ.

Anno 34. E.

3.

Nº XV.

Of the ſame.

By Mr. AGARDE.

I HAVE not found in all the historyes of the ancient Brittons, Saxons, nor Danes, which heretofore were poſſeſſours of theſe realmes, the name of conſtable, neither his office, nor authoritye to be ſett out. The firſt I fynd mentioned with vs is in the conquerour's tyme, and I am certayne, that that name was not uſed before, neither any officer knowne by it, nor what his authority was. That, which our common conſtables do uſe, that is, to be an officer for the preſervation of the peace in ſome towne or village where he dwelleth, and to attache all ſuch that ſhall infringe the ſame; and further to arreſt all felons, murthers, or ſuſpected perſons, ſearch their houſes, lodgings, and places of reſort, and them and their goods to put in ſafe cuſtody, and imprifion, vntil they ſhall be deliuered by law, is the ſame as in Canutus the Dane's laws is ſet downe by theſe words: *Et ſi quis centenario adeo ſuſpectus eſt, adeoq. calumnioſus,*

niosus, ut atribus calumpniatoribus calumpnietur, tunc nichil aliud fiat, nisi quod ad triplex Dei iudicium aseat. Where I note, that *centenarius* is to be taken here for, or instead of him, that we call cheife constable of the hundred. Againe, in another place in the same laws, wherein is appointed how a theife ought to be pursued and taken, are these words : *Hæc est consiliacio, quomodo centenarij conventus obseruari debeant. Primum quidem quod circa quatuor septimanas congregetur, & quisque alij rectum faciat. Quod si necessitas instet, primum nuncietur concionatori centenarij, qui deinde decimacionarijs omnesque profiscantur quosque ducatu Dei perveniant, quo cupiunt, furi quidem, quod rectum est, faciant secundum quod ante ab Edmundo constitutum est.* Soe as I suppose, that that office, which wee call constable, was called by them *decimacionarius*; and in that sence in some countreys here in England he is called yet *tything man*.

But leauing the course of the laws before the conquest; let vs come to that which the conquerour did after he was lord of all, and crowned for the preferuation of the peace and quiett of the realme, as it is sett downe boeth in the history of Normandy, and in the Redd and Blacke bookes of the Exchequer and Treasury, with which bookes I will first begin, reciting that which I am afrayd some will say, I haue too often vouched, that is, that he caused a view to be made of the laws used in this realme before he came, conteyned in these three, viz. *Merchenlage, Danelage, and Westsaxenlege, quarum quasdam approbans quasdam vero reprobans, illis transmarinas Neustria leges, quæ ad regni pacem tuendam efficacissima videbantur adiecit*, and with this agreeth the history of Normandy, that the conquerour, to winne the fauour of the people, did yeeld to them to be gouerned by St. Edward's laws. And yet, that hee might the better ouer-rule, he followed the course of the French and Norman gouernment. That was, in appointing stately offices to high and noble personages, knowing this to be a cheife poynt in gouernment, to haue authority regarded : as it is set downe in the præamble of the sayd Black booke,

Parronobilium copia, vel defectus, principum potestates humiliat, vel exaltat. Quibus enim hæc desunt, hostibus præda sunt. Quibus autem hæc suppetunt, hijs hostes in prædam cedunt.

Soe the conquerour created three speciall officers to haue regard to the quiet state of the realme for martiall affayres, as it seemeth by the sayd story of Normandy, by these words: *Le roy Guillaume le Bastard fist Hugh de Mortimer son conestable d'Angleterre le quell . . . estoit son parent de per son pere. Et le conte Roger de Montgomery, & le preux Guillaume le Fitz Osberne ces deux ils fait Mareschalls d'Angleterre.* Soe this is the first name of constable I doe reade of. Of the etimology of the name, I leaue it to them that are better skilled with the French then I. Yet, as I remember, there is an author, whether it be Bodine or other, which I reade a great while agoe, which defineth it thus: *Custos stabuli.* I must diuide them into these foure sorts,

- I. *High constable of England.*
- II. *Constables of castles, and their libertyes.*
- III. *Constables of hundreds.*
- IV. *Constables of townes and libertyes.*

Of euery of which, as I haue reade and conceaued, and foe of the first.

By the first institution of high constable of England, I fynd in the Black booke, his authority was great, and reached farr. For in the Exchequer [being the cheife place for administration of justice for the whole realme] he is the third person to be placed in the court, by his seate after *capitalis iustitia*, and *cancellarius*, then *constabularius*, and he is called *miles gregarius*, which is as much as to say a *forward and valiant knight*. After him the two chamberlaynes and miles, *qui vulgo dicitur marescallus*. These are all that are mencioned to sitt on the high bench; where note by the way, that the king was minded to haue some martiall men, to be raunged among his peaceable magistrates. But of the authority and practice of his office is sett downe to this effect: that he is witness to the king's writts togeather with the king's justice. *Quia in omnibus breuibz oportet conscribi testes.* And also, that he taking
with

with him the mareschall and his owne clerke, shall take the accounts of all stipendary souldiers seruing in garrison, or otherwise, and to giue them allowance, or to caſt their pay-ments. And the like he is to doe to the officers *accipitrario- rum seu falconariorum ſiue bernariorum*, except the king haue otherwiſe appointed ſome other to haue done that, which the auſthour ſayth he may doe. *Conſtabularius a rege non poteſt facile auelli propter maiora, & magis urgentia*: this ſtood good in king Henry the ſecond's time; but how they haue uſed or abuſed that high office after that tyme, whereby it is wholly extinguished boeth in the exchequer and the realme, I leaue it to others.

To the ſecond, that is to the conſtables of honours and caſtles, and ſo of the liberties of the ſame belonging, we reade in ſundry ſtorieſ and records of *conſtabularius caſtri Douer, turris London, conſtabularius Ceſtria, &c.* in which conſtables hands was the whole gouernment of that honour or caſtle.

For the two laſt, viz. conſtables of hundreds, and other inferiour conſtables, we haue the exerciſes of their offices ſoe daily in experience, that I need not to ſpeake thereof: for their antiquity, the firſt I read of is in a pleading in the king's-bench in trinity terme anno xv^{to} Edwardi primi, which I haue abbreviated out of the ſame record thus. Buck. Rolle. 7. *Conſtabularius, qui venit ſuper buteſium le- uatum, & petijt a malefactore, quod ſe redderet juſticiario, qui recusauit ſe ſubdere conſtabulario, per quod per conſtabu- larium captus fuit, & im priſonatus, nunc per juratores ac- quietatur, & adjudicatur, quod eat ſine die.*

N^o. XVI.

Of the fame.

By Mr. LEIGH.

WE find, in the writers of politicks, that it is required of a prince or monarch, that in his owne person he should not be ignorant of the two maine practices of gouernment, that is, warr and peace.

Yet we see, that in those commonwealths that are most plentiful of worthy citizens, the selfe same men are neuer employed in boeth these seruices, but the offices of peace are still managed by the crowne-men, and the busineses of warr are onely imposed vpon those that are brought up in that course of life: so by this it appeareth, that the burthen of the prince is double to that of his seruants and minister vnder him.

Hereupon princes haue, and doe use to helpe and ease themselves in their gouernments, by constituting great officers distinctly and seuerally boeth in matters of warr and matters of peace, that may with them beare part of their burthen. In England the high constable is an officer of great honour and authority, appointed and ordeyned in the beginning for the assistance of the king in martiall affayres, and came into this realme out of France, as is most likely, and to them out of the empire: for that derivation of the name, which Mr. Lambard draweth from the old Saxon, in my opinion is not soe likely as that which we may take from the Latine, which is *comes stabuli*, the lieutenant of the horse: for *comes* signified the same in the times of the Roman empire, that *Legatus* did in the beginning, as Rofinus in the booke de antiquitat. Roman. lib. 10. cap. 17. noteth: soe that the word is lieutenant of the stable, and this was the very nature of the office at the beginning, for he is called *magister equitum* by Vincentius Lupanus, a learned writer de magistratib. Francia.

Antiquity and Office of Constable of England.

This kind of title is warranted by the like titles of many other offices, where the cheife and principall is called *comes*, as *comes sacri palatii* is the great master; *comes sacrarum largitionum*, he that beareth the king's purse for rewards; *comes sacri patrimonij*, the attorney of the generall, and priuate patrimony, as our attorney of the dutchy.

The greatnes of these officers hath bin a cause of much trouble to their princes in France. It turned the family of Clodoueus out of the possession of the crowne, and brought in king Pipin: and Charlemaine's posterity lost the crowne of France, by it, to the Capetts.

In France the constable is ranked the fourth from the king, as the second is the daulphin, the third regens, which is an office in use onely when the king is an infant or mad, the fourth the constable. This greatnes made them ouerbold with their princes, and soe grew odious; for Lewis the 11th made a law, that none should be called constable of France. Charles the 8th restored the office and granted it to John of Burbon; Francis the first to Charles of Burbon; but he beuolted to Charles the 5th emperor; and Memorancy was the next that had it.

We haue not bin free in England from tumults rayfed by these great officers; but I omitt to recite our chronicles, which are so well knowne to all this company.

Yet the office of the constable of England is not soe great, either in place or jurisdiction, with us as with them; for I doe not thinke but that the statute of 31 Henry 8. cap. 10. had an imitation of the auncient custome of the realme, in appoynting the places of the great lords: and by that, the officers of peace are first placed, then the officers of warr; as the chancellour, treasurer, president of the councell, lord priuy seale; then the officers of warr, as the chamberlaine of England, the constable, the mareschall, the admiral.

His jurisdiction with vs is limited by the statute of Richard 2. anno 13. cap. 2. that he shall meddle onely in contracts concerning deedes of armes without the realme and within. Besides it was not in this realme bestowed on

speciall men for their singularity of ability to execute it, but might haue runne to a mad-man or a foole by our law, for it was inheritable by descent, and belonged to the family of Bohun's, earles of Hereford and Essex, as the tenure of the mannours of Harfield, Newenham, and Whittenhurst, and by that meanes descended by Mary and Elianour, the two daughters and heyres of Humphrey Bohun, earle of Hereford and Essex, and constable of England, to Henry the 4th, and to the dukes of Buckingham, whereupon in the 11th of Elizabeth, in my lord Dier, three questions were resolued in our law.

- I. *That this is a good tenure reserued at the first, to hold land by being high constable of England.*
- II. *That the coheyrres before marriage might execute the office by deputy, and after marriage the husband of the eldest should doe it alone.*
- III. *That part of the office being deuolued to the king, as heyre to one of the coparceners, the heyre of the other coparcener might exercise it himselfe alone.*

But king Henry the 8th, in the 6th yeare of his raigne did disclayme to haue the seruice performed, because it was high and dangerous.

The case is discussed more in Mr. Recorder's booke of reports, 6 Henry 8th. where it is agreed to be grand sergeanty, and the king himselfe being in place with the judges, this conference was between them: Neuill. It hath bin a common saying, that the constable of England by virtue of his office may arrest the king. Fineux. We know not of any such authority belonging to any officer of the realme, by the common law of the realme: king Henry the 8th. what things may the constable of England doe by reason of his office? Fineux. Sir, this poynt apperteyneth to your law of armes, of which we haue noe knowledge.

By this it appeareth, that the office was supposed to bee of greater power than the judges of the realme did admitt, as to arrest the king, which was an idle tradition, and dis-

proved by them in their graue censure : and that the jurisdiction of the constable is in the exercise of the martiall law,

This little I can say of the originall, etimology, nature, and quality of this office of high constable, and of the jurisdiction of it in our common wealth. What may more be sayd of the antiquity of it, I leaue to my masters, that are to speake after mee, that are better acquaynted in that poynt, then I am.

Nº XVII.

Of the same.

By . . . ANONYMOUS.

I SUPPOSE it out of question, that the constables office is, to deale in all matters and causes military, but whereof he hath his name, it hath bin some question. Some will haue him called *conestabilis, quasi comes stabuli*, and some *comes stabilis, quasi comes stabiliens*, as it were the person that vnderproppeth or strengtheneth the king, boeth which may well stand together, and that he tooke name of them boeth, although I rather thinke of the first, because the strength of military seruice consisteth most of horse, is as it were the establishing and strengthening of the king.

This officer, according to the diuersity of nations and tymes, obteyned diuerse names, being called *conestabilis, tribunus ceterum, tribunus militum, magister equitum, tribunus equitum, princeps militum & prepositus militia*, by which last name some civilians haue not doubted, to call Michaell the archangell the constable of God, because he was *princeps & prepositus militia* against Lucifer. Of the antiquity, of the diuers names, and of the office, of whom I will say somewhat, as they were amongst the Hebrews, Greekes, Romanes, French, Saxons, and English.

Touching the antiquity, there is noe doubt but the same officer is as auncient as there hath bin battels, and directours of battels; but how they were in the infancy of the world termed, I know not: but after, when the people of the Jews, and other nations were growne to a settled government vnder kings, then this supreme governour of the army vnder kings had one especiall title, and was called *princeps militiae*, as was Nebuchodonosor vnder the kings of the Assyrians, Judith 2. Abner vnder Saul. 1 Reg. cap. ult. Joab vnder Dauid. 2 Reg. 9. Naaman vnder the king of Assyria. 4 Reg. cap. 5. &c. who being *principes militiae* had the same authority that the constables synce haue had ouer their souldiers and battells: the Greekes also wanted not this officer, called *ἡπάρχος*, or *princeps equorum*; this *ἡπάρχος* did carry the sword before the emperour, according to that notable saying out of Dion and Suidas, that when Trajane deliuered the sword to the bearer he said; *en, accipe gladium, & si recte imperauero, pro me, sin minus, in me utaris*; being a poesie which the young king of Seotts in the beginning of his raigne sett upon his coyne. After the remoue of the Roman empire to Constantinople, and that it was diuided into the east and west, they had the same officer as the constable; as appeareth by Gropalates, who called him *ὁ μέγας κωνσταντίνος*, whom Procopius [as hath Pyrrhus] called *ὁ ἀποροσάδαριος*, as the cheife that dealt with the sword and carryed the sword. The Romans had the like officer called *tribunus celerum*, *tribunus militum*, *magister equitum*, *praefectus praetorij*. For all these were the names of one principall officer, which had in seuerall ages the direction of military affayres, as had our constable; and that all these officers were one, Fenestella reporteth, c. 2. 9. 22. whose words for breuity sake I omit. But after the tyme of Constantine the great, when the names of officers began to be altered, and that his domestlicall officers were entituled *comites palatij*, *comites horreorum scholarum*, &c. this officer hauing the charge of the souldiers and the warr, which consisted in horse, was also called *comes stabuli*.

Amongst

Amongst the French this officer was also called *comes stabuli*, whence is deduced *constable*, as hath Procopius, who mentions the constables of the kings of France, Cherebert and Childerick. This constable was amongst them the cheifest of the army, if the king were not in person. His office was to deale in all martiall matters in the army, and to haue the oversight and rule, as hath Bell-forrest, of the harolds, of blazon of armes, of trumpets, of all actions of the souldiers, &c. For the full declaration of his authority I referre you to Bellforest, Tillius, and Lupanus, who treat thereof. This officer in French is called *le grand esquire*, or *magnus scutarius*, having his seate of iustice in the king's pallace att the marble table; the forme of making which constable in France was, that the king delivered him a sword sett with lillyes, and tooke a solemne oath of him.

The Saxons likewise had this officer by the name of *dux*, who was the king's lieutenant in euery countrey for the men of warre, to leade them to battell, and to judge all causes thereunto belonging. This duke was amongst them in their language called *stalhere*, as it were lord of the stable; for the Saxons call that a *stall* which we call a stable, and *here* signifyeth lord; though *hertzog* be the name of a duke of honour, yet *stalhere* was *dux*, a *ducendo exercitu*; in Latine he is called *vexillifer regis*, which is the office of constable; for he is to beare the king's standard in the warrs. Of this *stalhere* I fynd three authorities: the booke of Ely sayth *de famosa villa Estre alio nomine Plasq vocata, misere ab Ely est distracta: Algarus quidem stalhere, quod Latine dux dicitur, eam invasit*. Secondly, the booke of Waltham sayth; *Esgarus regia procurator aulae Edwardi, qui & Anglice dictus stalhere, id est, regni vexillifer*. Thirdly, I fynd in an old anonymall, *Godricus & Edmundus filii regis Haroldi de Hibernia redeuntes, in Sommerset applicuerunt, quibus Adnothus domini regis Haroldi stalherus occurrit cum exercitu*.

To auoyd tediousness I come from the Saxons to the Normans; the name of constable amongst them being
meere

meere French, came into England with the conquerour; for amongst other laws of his, this is one, that if a Frenchman doe appeale an Englishman of perjury, robbery, or murther, the English may defend himselfe by combate, which was then termed an *English earnest*, a word which we keep to this day; and forasmuch as the thing itselfe was neuer before permitted by law, it is to be granted, that there was then some officer appoynted, to see that performed, which was the constable, which may appeare not onely by history, but by speciall president, that I haue seene of the whole order of proceeding before him in that behalfe. Of his authority, Fleta hath liberally discoursed in his officers of England, whereunto I referre you, and will onely touch such few records as I fynd touching this office. The office of constable. [if there were any] for there was none synce the beheading of the last constable, the duke of Buckingham, about 12 Henry 8. is to deale in all matter military, whereof he hath one speciall court called *curia militaris*; this court and the marshall's is all one; for the marshall by the laws of England is but the constable's deputy, and what the constable may doe being present, the same the marshall may doe in his absence, of which constables court there is mention in the tyme of Henry 4. in an appeale made by John Chamberline, touching a judgement given by John Cheneys, knight, the constable's lieutenant in the military court about deteyning of a prisoner, claus. 2 Henry 4. membran. 5. That the harolds and matters of arms were subject to the constable's authority in England like as in France, you shall fynd in the records of the Tower. The controuersy decided in the military court between Scroop and Grossevenour for the bearing of the armes, azure, a bend or, and in a goodly booke of monuments of the controuersy between Reginald Grey and Sir Edward Hastings, for bearing the armes of Hastings earle of Penbroke, determined in the constable's and marshall's court in the tyme of Henry 4. moreouer in claus. 2 Henry 4. parte 2. membran. 16. you shall fynd that Hugh Blowet, alias Bruce, harold of Scotland committed to prison in the Tower of London, was brought

brought before the constable of England to receive such sentence which should be given upon him, which proueth directly his authority in matters belonging to heraldry.

Lastly, I will produce you one judgement of the constables in matters armouriall, belonging to some of my family, which is, that in Henry 7. Stanley earle of Darby, constable of England, in the king's chamber at Westminster judicially determined, that Sir Thomas Ashton, knight, should beare for his proper armes, argent, a mullet vnpainted of five poynts fable, alohe, or quarterly in the first quarter; if more armes by descent fall to his inheritance; and Sir Piers a Leigh, and his heyres, shall beare the same armes quarterly, soe they be not in the first quarter, with a bezant on the first poynt; foreseene always, that if the aforesaid Sir Piers can fynd, at any tyme hereafter, any sufficient euident with authority, and before the constable allowable, that then he, and his heyres may beare the same without the bezant, or other difference; present at this determination amongst others, garter and norroy, kings at armes, and also by commandment of the sayd lord constable to the aforesayd officers at armes, this present bill to be registered in the bookes of authority from this tyme forth. And soe I conclude, omitting infinite matter that might concerne the constable, for that a catalogue of the constables of England by inheritance, and others of the princes grants is set downe in Hollinghead, whereunto I referre you.

JUSTITIARIUS ANGLIÆ.

Justitiarius Angliæ est secundus a rege.

Justitiarius Angliæ secunda persona regni.

When king Richard by his letters from Palestine suspended the chiefe justice William de Lonchamp from the execution of his office, he committed the charge and authority thereof to foure chiefe barons of the kingdom in these words: *precipimus vobis, ut secundam dispositionem vestram, tam de escheatis, quam de omnibus alijs agendis regni disponatis.* This is confirmed by Hoveden.

Per

Juh. Saresbur.
Lib. Dunelmens.
M. Paris.
Hoveden.

Per justitiarium Anglia omnia regni negotia terminantur.

Jorvalensia.

He called all accomptants, or sheriffs, and their bayliffs to account.

Radulphus de Diceto.

He is bound by his office to mainteyne and preferue the writts of inuestitures, and all other priuileges, and dignities, and customes of the king and crowne.

M. Paris.

Justitarius Anglia ministrabat tam de rebus perceptis, quam exceptis.

Idem.

Walterus Theobaldus archiepiscopus cantuarius, and chiefe justiciar leauyed an army, and went with it against the rebels in Wales.

Camden.

The justiciars had the chiefe command of king Richard's fleet, when he went to the holy land [as Admirall] and had the charge of the king's navy, and all manner of affayres.

M. Paris.

Hubert archiepiscopus cantuarius, tooke by force certalne offenders out of a church, or sanctuary, and did justice vpon them.

Chronicle.
Rossens.

Hugo Bigot totius Anglie capitalis justitarius cepit Angliam circumspecta comitatu ad comitatum, a libertate ad libertatem, omnibus pro meritis impensurus justitiam.

Johannes Seldan.

The chiefe justice might direct a preceipe to the king, to require him to answer to such a complaynt, or suit of a demandant. By these places it appeareth that the chiefe justice at his pleasure exercised the offices of the constable, of the marshall, of the treasurer, of the admirall, and of the chiefe judge.

G. B. U. C.

N^o XVIII.

The Antiquity and Office of the Earl Marshall of England.

By M^r. CAMDEN.

SUCH is the vncertainty of etimologies, that arguments drawne from them are of least force, and therefore called by an auncient Græcian *μαρτυρία ἀναλογία*, as proofes onely, which doe nothing but sett a good face on the matter. Neuertheless, when as Plato will haue them admitted, if there be a consonancy and correspondency between the name of the thing, and the thing named, we will produce three etimologies of this word mareschall, wherein the name is or hath bin answerable to the office in some part or other in signification; for the word mareschallus is used for a principall officer in the court, in the campe for a ferriar and an harbinger. The Germans, from whom the word was first borrowed, called him *marescall*; the Latines mollifying the same, *marescallus*, the office *marescallia*; the French *marescaux*; and wee mareschall; all deduced from the German *marescall*, which, according to the received opinion, is compounded of *marc* or *mark*, which doe boeth, say they, signify an *Horse*, and *scall*, which doeth not signify *skillfull*, as some say, but an *officer*, *seruant*, or *attendant*; soe God's *scalke* is interpreted God's *seruant*, and in the old Germane *nunc demittas seruum*, this word *seruus* is translated *scall*, soe that joyntly the word notifyeth an *officer* and *attendant* about *horses*. This etimology is confirmed first *ex legibus Alamannorum: si quis marescallum, qui duodecim equis præest, occidat. 40. sol. componat.* Then out of Choniates, who writing the life of Baldwyne, emperour of Constantinople, sayth, that this word *marescaldos* noteth him whom the Græcians called *πρωτοπράτωρ*, which according to the name doeth signify him which marcheth foremost before the army.

army. To mainteyne this etymology, they say, it may not seeme strange that soe high an office as it is now, should be deriued from horses, when as all preferment in auncient tyme, as one sayth, had the first rise from the stable; and such as were there brought vp, proued most seruiceable horsemen, and many other names which tyme hath aduanced to high dignity, had very meane and small originals. But this etymology lyeth open to some objections, as that the marshalls now haue no command ouer the horses, or stable. But certaine it is, that in diuers offices, albeit the functions are altered, the name remaineth. And as Varro writeth, *equis* among the Latines doeth not onely signify *master and ruler* of the horses, but also of all other things committed to his charge; so it accordingly is to be supposed, this word *marshall* not onely to signify an officer of horses, but also of other ciuill and military matters appropriated to his function: it is sayd also, that *mare* doeth not signify an horse in the German tongue, but as in ours, that which is more ignoble in that kind; and that names are to be imposed *a potiori*. And albeit it is most certaine out of Pausanias, that *mare* signified an horse to the old Gaules, as it doeth still to our Brittaines their descendants, yet they say it is vnfitting to compound one word of two different languages. But Quintilian sheweth the contrary in *epicedium*, *anticrato*, *biclinium*, *epitogium*, being compounds of Greeke, Latine, and other tongues: and to this etymology doe they incline, which will haue the marshall to be called in Latine *magister equitum* rather then *tribunus militum*.

There is also another deduction of marshall from *maer*, the Latine word *maior*, and *sala*, which signifyeth a king's court in the High Dutch, for that they were *magistri domus* and principall officers for ordering the court.

There is a third deriuation of this name from *mark*, as it signifieth a *marehe*, bound, or *limitt*, and *scalk*, which is *minister*, as we sayd before. From *mark* in this sence we haue *marchio* for a lord *marcher*, and *markgraue* in the very same sence; and therefore he relyeth vpon this opinion,

which calleth the *marshall* in Latine *prator comitatus augustialis*, as being the ciuill judge within the limitts of the court, which we call now the verge, for that the verge or the rode of the marshall's authority stretcheth soe farr; and they also, which haue the marshall called in Latine *designator castrorum*, for it was Incident to his office as it were an harbenger, and to appoynt limitts and lodgings boeth in warr and peace. Of these etimologies happily one may be true, happily none.

When this word entered first into England I cannot resolve; I doe not fynd that our Saxons used it, or any other name equiualent vnto it, vnless it was *stal-here*, which signifieth *master of the stable*, but that may seeme rather answerable to the name of constable. Yet Esgar, who was *stalhere* to King Edward the confessor, writeth himselfe in a donation to Waltham *regis procurator aule*. Whereas William Fitz Osborne in the chronicles of Normandy is called the marshall, I belieane that William Tailleure the authour spake according to the tyme he liued in, and not according to the tyme he wrote of. Fauchett a learned man in the French antiquities sayth, the name of marshall was first heard of about the tyme of Lewis le Grosse, who was in tyme equall to our king Henry the first, and Stephen of England, and from thence doubtlesse wee borrowed that name as many other.

The first authour that used the word in England, was Petrus Blesensis, chancellour, as he was then called, but indeed secretary to king Henry the second of England, who used this word *marescallus* for a Harbenger, in these words complayning of them. *Epistola 14. vidi plurius qui marescallis manum porrexerunt liberalem: hi dum hospitium post longi defatigationem itineris cum plurimo labore quaesissent, cum adhuc essent eorum epula semicruda, aut cum jam forte sederent in mensa, quandoque etiam cum jam dormirent in stratis, marescalli supervenientes in superbia & abusione, abscissis equorum capistris, ejectisque foras sine delectu, & non sine iactura sarcinalis eos ab hospitij turpiter ejiciebant, & expellebant.*

The first mention that I fynd of a marshall in record, is in the Red booke of the exchequer written in the tyme of Henry the second, which hath reference to the tyme of king Henry the first: *regis avus*, that is king Henry the first, *seoffavit Wiganum Marefcallum suum de tenementis, que de eo tenuit, per seruitum marefcallie sue, & rex reddidit ea Radulpho filio Wigani, tanquam marefcallo suo*; what marshall this was I cannot determine. The second mention of marshall is in the first of king John, and hath also a reference to the tyme of king Henry the first, in this charter, where king John confirmeth the office of marshall vnto William Marshall earle of Penbroke, in these words: *Johannes dei gratia, &c. Sciatis, nos concessisse & presenti carta nostra confirmasse dilecto, & fideli nostro Willielmo Marefcallo comite Penbrook, & heredibus suis magistratum marefcallie curie nostre, quem magistratum Gilbertus marefcallus Henrici regis avi patris nostri, & Johannes filius ipsius disrationaverunt coram pradicto rege Henrico in curia sua contra Robertum de Venoiz, & contra Willielmum de Hastings, qui ipsum magistratum calumniabantur, & hoc judicio quia defecerunt se a recto ad diem, quem eis constituerat rex Henricus in curia sua, sicut carta ipsius regis, quam vidimus testatur, &c.* Here is to be noted out of these authentick records, that there were marshalls in the tyme of king Henry the first, answerable in tyme to the first marshalls in France: that there were more marshalls than one, and that William Marshall earle of Penbrook had onely *magistratum marefcallie curie*, that is, marshall of the king's house, which office was soe long inuested in the family, that it gaue them a surname, as also to other families which haue bin marshalls in great houses: and lastly, that it was giuen to William Marshall, and his heyres, and so it was challenged by them, as hereditary. Neuertheless it is certaine, that the next succeeding king Henry the third tooke away that office from Richard Marshall the son of the sayd William: for among the greiuances of which the sayd Richard complaynes, was, as appeareth in the history of Thomas Rudborne, that the king, in these termes,

spoliavit

Spoliavit me officio Marescalcia, quod hereditario ad me pertinet, & possedi, nec aliquo ad illud me restituere voluit requisitus: happily vpon this ground, which Rigordus the French historian writeth in this age of the marshallship in France. *Hereditaria Successio in talibus Officijs locum non habet.* And after he was dead, and his brethren, his five sisters and coheyles, which, as appeareth by the partition, had euery one one thousand five hundred and twenty pounds yearly rent, began to contend about the office of marshallship and the manour of Hampsteed, marshall in the countrey of Berkshire, belonging to the same. But Roger Bygod son of the eldest daughter with great difficulty obteyned the same: for as Matthew Paris writeth, 1246. *Multiplicatis intercessionibus concessa est Marescalcia cum officio & honore comiti Rogero Bygod ratione comitissa filia comitis magni Willielmi Marescalli primogenita matris suæ.* His nephew Roger Bygod earle of Norfolk was forced to surrender to king Edward the First this office with all his inheritance in England, Ireland, and Wales for certaine insolencys against the king. And this Roger, or his vnckle Roger, was he which first stiled himselfe [as pride is highest, when downfall is nearest] *marescallus Angliæ*, whereas all his predeceffours used noe other stiles then the simple addition of *marescallus*, as *Gulielmus, Richardus, Gilbertus marescallus comes Penbrookia*. And noe doubt, but as the greatnes of William Marshall the elder, called the great earle, which he had gotten in the minority of king Henry the Third, gaue the first greatnes to this office: soe there was a farr greater access thereunto of dignity when king Edward the Second granted to Thomas of Brotherton his halfe brother, a prince of the bloud, the land of Bigod, and shortly after the office of marshallship with the rights thereunto belonging and performing the seruice accordingly.

After the death of Thomas of Brotherton, we fynd William Mountacute earle of Sarum, Thomas Beauchamp earle of Warwick, Henry lord Percy, John Fitz Alaine lord Maltravers, Thomas Holland earle of Kent, and then Thomas Mowbray right heyre vnto Brotherton, had the office of the
marshall

marshall of England, with the name, stile, title, state, and honour granted to him in the twentyeth yeare of king Richard the Second, *de assensu parliamenti sibi, & heredibus suis masculis de corpore*. Yet nevertheless the next yeare after he being banished, it was granted to Thomas Holland duke of Surry, as amply as it was to him: and that he might as well beare in the presence, and absence of the king, a rod of Gold enamelled at boeth ends, with the king's armes at the vpper end, and his owne in the lower end. Afterward, according to the alteration of tymes, sometyme the Mowbrayes and the Howards descended from them, sometyme others by interruptions, vpon sundry occasions enjoyed the same dignity.

What belonged to that office aunciently. I haue read nothing, but that at the coronation of king Richard the First, William Marshall earle of Penbroke carryed the royall scepter, which had the crosse in the top: and at the coronation of queene Eleanor, wife to king Henry the Third, the marshall carryed a rod before the king, made way boeth in church and court, and ordered the feast, as Mathew Paris writeth. There is a treatise carryed about the office of the earle marshall in the tyme of king Henry the Second, and another of the tyme of Thomas of Brotherton, where I fynd confusedly what belonged to them in court and campe; as in court, that at the coronation the marshal should haue the king's horse and harnes, and the queene's palfrey: that he should hold the crowne att the coronation: that he should haue vpon high feasts, as the high vsher the table clothes, and cloth of estate for that day: that he keepe the hall in quiett; that he should bring offenders within the verge before the high steward: that he should assigne lodgings, and when the king passed the seas, each man to his ship: that he shall haue for his livery three winter robes at Christmas, and three summer robes at Whitsuntide: that he should allow but twelue common women to follow the court; in which seruice, I suppose, he had Haymo de Cayton his substitute, which was called *Marescallus Meretricum*, by which seruice he held the man-

nour of Cateshall in the county of Surrey : that he should haue a deputy in the King's Bench : that he should keepe vagabonds from the court : in campe that he should leade the fore-ward : that the constable with him should hold courts in the campe : that he should haue certaine speciall forfeitures, as armour and weapons of prisoners, to appoint lodgings, to be abroad till all be lodged, to haue fees of armourers and victuallers of the campe, to haue all the armour, and whole cloth of towns taken by composition, to haue ransome of prisoners escaped, if they bee taken againe, with many such like, too long here to be specified. And in peace and warr the marshall should execute the constables commandments, in arrests, and attachments, and that appeareth by the processe between Grey and Hastings. In the second statute of Westminster held 13 E. 1. when many greiuances of the marshall were complayned of, it was ordeyned in these words: *Marescallus de comite & Barone integram Baroniam tenente, de uno Palfrido sit contentus, vel de pratio, quala antiquitus percipere consuevit, ita, quod si ad homagium, quod fecit, palfridum, vel pratum in forma predicta ceperit, ad militiam suam nihil capiat; & si forte ad homagium nihil ceperit, ad militiam suam capiat. De Abbatibus & Prioribus integram Baroniam tenentibus, cum homagium, aut fidelitatem pro Baronijs suis fecerant, capiat palfridum, vel pratum, ut predictum est. Hoc idem de archiepiscopis & episcopis observandum est. De his autem, qui partem baronie tenent, siue sint religiosi, siue seculares capiat secundum portionem partis baronie, quam tenent. De religiosi tenentibus in liberam elemosynam, & non per baroniam, vel partem, nihil de cetero exigat Marescallus.* And about that tyme were sett downe all the droyts belonging to the earle marshall in a rolle, which was layd vp in the warderobe; but that vanished shortly after. For, as it appeareth by record in 18 E. 3. the king directed a breife to the barons of the Exchequer of the fees, and all thing else belonging to the office of earle marshall, and they returned in the certificate annexed to the breife, nothing but certaine petty allowances of money, wine, and candles

candles for the marshall, and *magister marescallus*, and for the foure marshalls for euery day, *qua faciant herbergeriam*. And out of the Red booke of the exchequer they certify in these words: *de officio marescalcia seruiuit Gilbertus marescall comes de Strigul, cuius est officium, tumultus sedare in domo regis, liberationes hospitiorum facere, ostia aula regis custodire; accipit autem de quolibet barone facto milite a rege, & quolibet comite eo die, palfredum cum sella.* And by an inquisition taken about 11 Henry 5. it appeareth, that there belongeth to the earle marshall's disposing, the office of the marshall in the king's-bench, the marshall of the exchequer, with the office of the cryer before the marshall, and the marshalls of the hall of the king's house, and some other places: but the greatest interests of this office hath bin, synce there were noe constables; for the kings synce that tyme haue referred many matters to them, which in former tymes were proper to the constable: neither had the marshall any precedency in respect of his place, vntill king Henry the eighth in the 31st yeare of his raigne, by parliament assigned him place next to the lord constable, and before the lord admirall.

No XIX.

Of the same.

By Sir ROBERT COTTON.

THE plenty of this discourse, the last question of high constables, whereto it held relation, hath preuented; yet what I haue after soe many endeavours obserued, I will in the method of the question deliuer: which fitly induceth with it, an etimology before the antiquity: what learning doeth after properly concerne the office, may be, in the function or person, considered.

The deriuation. The French writers, the true authors of our transferred office, traduce a composition of *mar*, or *mere* with Pausanias, an old German word for a *horse*, and frequent to this day in the Netherlands, and *scalck*, which with them importeth *skillfull*, or *schall*, a *serjeant*, or *officer*. And in such regard, Guntherus a poett, almost in the infancy of that name, doeth Latine that office *stabulator*; and with vs the master of the king's horse is not in record vnrequently called *marescallus equorum*. In the laws of Clotharius Magnus, and which may performe a prooffe of the name, it is from the former etimology see called, because the charge was, *præesse duodecim equis maioribus*. For our owne state, vnless we will admitt the story of Normandy, by which Montgomery and Fitz Osborne were the conquerors *marshalls d'Angleterre*, we cannot exceed the tymes of Henry 2. and noe earle before king John, vnder whom William earle of Penbroke was by patent *marshall*. The honourable addition of earle may proceed from an vnproper translation of *Comes*, which was a most common adjunct in the empires period to all these offices that the better state called *præfetti*, *legati*, *tribuni*, *præpositi*, *primicerij*, or *magistri*. Such was the *comes palatij*, or *just steward*, *comes sacri patrimonij*, the prince's *aduocate* or *atturny*, *comes sacrarum largitionum*, *keeper of the priuy purse*, and *comes stabuli*, the *constable* or *marshall*. All these were *comites* [as Lancelot noteth] *Quia commerant cum imperatore, ut socij in bello, vel in aula*. But after it became a title honourable, many of these offices fell to be called *domestici* & *magistri* againe: but our marshalls haue continued that stile, being earles before or att the investiture; as to that subsequent honour of *marshall of England*, I take it to be noe older than the tyme of Richard the second, when in the titular increase of the dignity, the reality of that office wayned. And thus much for the name.

Now of the function and person. The first being considered from the antiquity, diuersity, and right of the creation,

tour. Antiquity doubtless had this office as old as warr had order; such was, by conjecture of name, amongst the Lacædemonians the ἵππαρχος, and *hippagræta*, soe called a *colligendis equis*, or by the function rather πολέμαρχος, as after the congruency of office may intice beleefe. In Rome's greatness the *tribunus militum* vnderwent this duty, as the εἰρηναρχος did in the Eastern empire, and therefore Johannes Lucius in his *placitorum curiæ*, and Alciat translate *tribunos*, *les mareschaux*: but it may be, that in all particularities our marshall suted not to these Greeke or Latine offices, being to them rather instar then similis: for at the entrance of the French monarchy, the *præfectus palatii* supplied all such roomes, which the third family of the French king's determined, by instituting a constable, and vnder him two marshalls, vntil Francis the second, when that number increased, ouer military affayres. By what name the Saxons knew this officer I haue noe warrant, but the name and office now in esse, we borrowed, as all other fashions, by the imitation of our French neighbours.

The different dignities of our marshall are foure. Those that attend the king, and seate embassadours in the hall, as the vsers doe in chambers; next *marescallus equorum*, master of the horse; then the earle marshall; and last a knight marshall, whom the earle *assensu regis* may depute to performe his office at all hands; like to this last is in Poland *marfcalcus regni*, *marfcallus curiæ*. The institution of this high office must be alone the king's; the French laws say, *marescallorum officia ad regem vt domestica pertinere*; whereas the king doeth create them by patent, for soe was William earle of Penbroke the elder brother, by king John, as the second was by Henry the third in this forme; *Rex omnibus salutem: sciatis quod reddidimus Willielmo Marefcallo, comiti Penbrook, marescalciam suam adeo plene, & integre cum omnibus libertatibus ad eandem marescalciam pertinentibus, vt frater ejus Willielmus Marefcallus quondam comes Penbrook eam melius & plenius tenuit*. Of this office, because it is by tenure in grand serjeanty, the king may for escape of prisoners, or to loss in regard of their hold, make a

seizure. Soe tooke Edward the first from Hugh Bigod the rod and office, deliivering it to the custody of the sheriff of Kent.

For the office, I am induced by obseruation, to beleaue, that it was in peace the subordinate minister to the steward for execution, as the sheriffe is to the judge, and in warr the substitute, sometimes the vicegerent of the constable; and doubtless, howsoever now, it had *imperium* onely, and not *iurisdictiōem*: for all magistracy was formerly distinguished as itt had in it *merum imperium mixtum*, or *iurisdictiōem*, the last implying *iuris dicendi potestatem*, peculiar to the judges, and is sometymes called *examen*, *disquisitio*, *cognitio*; but when *præfectura*, it doeth intend *mixtum imperium* in the same person, haping both *iurisdictiōem*, and *sententiæ executionem*; this had in *privatis* the *præfectus prætorius*, the nearest of the Roman officers in function and creation to our constable: but *merum imperium* hath bare execution, and *gladii potestatem*. Such were of old *tribunus militum*, *legati tribunorum*, now marshalls, and *præpositi marescallorum*, knight marshalls, the office being *reos perquirere & custodire*, and execute the judges sentence, hauing onely *imperium nudum sine iurisdictiōe*; for it might be much injustice to invest *iurisdictiōem* in the marshall, synce the inheritance may cast a disability by infancy, sex, and naturall defects. And therefore may many reasons be inferred from practice of former tymes, that they did soe repute it; for Fleta sayth, that not onely *marescallus* is *suo periculo omnes captos infra virgatam custodire*, but *de eis coram seneschallo respondere, & de iudicatis plenam facere executionem*: and the steward did of course command the clerke that keepeth *placita aula pro rege*, to direct his writt *marescallo quod ipsum de quo fit questio, & clamor sine dilatione faciat attachiari*, soe that he bee *infra metas hospitij*; hereby taking him but as the sheriffe, hauing onely *imperium*, and if any be committed for debt by the steward, it must bee to the marshall, who may not payle for aboue forty days *sine juris injuria*.

Another

Another conjecture is, that although he sitteth in the court with the constable, yet the cognizance of the plea [a marke of jurisdiction] is not before him, but before the constable, who is judge.

A third reason is that he is not sworne, but as the *tribunus militum* without oath admitted, and therefore ought not to haue jurisdiction, as had judges who were vnder oath authorized, as may appeare by many places in the Roman story. But of late, custome and statute law, in want of *seneschallus hospitij* and *constable*, have diuerted all their jurisdiction on the marshall, for he hath now plea of trespass within the verge, and of contracts between parties in the king's house; but by inquest of the country next adjoyning, boeth parties not being of the household: and attachements shall be made in actions before him.

Now for his duties in court; of old it was either for execution of justice, or state seruice: for, as afore declared, he was as sheriffe to the steward who representeth [as Fleta sayth] the king's person within the verge, hearing and determining pleas of the crowne, and in common causes *vicem gerens capitalis iustitiarj*, whereas the marshall wayteth the steward's command, returneth the attachments in court to his censure, and taketh execution of his judgments.

The marshall's authority executory extendeth twelue miles in circuit of the court, and is called *balliva*, and from his rod, the verge which Fleta nameth *virga pacis*, he hath correcting power ouer euill persons [such haue the marshalls of Poland] and of dissolute women, that frequent the court, taking of them for the first offence foure-pence; the second imprisoning, and before the steward abjuring them the court; the third poling of their hayre; and the last cutting off the vpper lipp, in this sharing part of the irenarcha's duty, who did punish *per lasciuiam aliquid agentes, & mulierum stupratores*.

Other seruice he hath in court, as *hospitia liberare camerario regis pro rege*, and to entertaine strangers for the king's honour: hee may assesse victualls and other necessaries

ryes for the court. In ordering of state they are principall officers; the Polish statutes calling them *omnium ceremoniarum magistros*. At the coronation he attendeth on horsebacke with his tipstaffe, as the constable doeth with his mace, the king to Westminster. In Germany he is the emperor's sword-bearer; but that with vs and France is the constable: he hath with vs power of decision in causes of armes and honour, and is in triumphs a cheife officer; he with the constable hath direction ouer the officers *Accipitrariorum & falconariorum*. And thus farr *de togato officio*.

In warr, he hath the first place next the constable, being as *tribunus* was to *magister equitum*, and must be in *primacie*, & *loca deliberare toti exercitui*, and hath regard of the watch; in this it suteth with the *tribunus*, whose duety was *castris locum illigere*, being therefore called *magister castrorum*, whom the Germans name the *feild marescalk*, and the French *mareschaux de champ*, employing their prouost marshall to punish their *transfugas & prædones*. By a decree of Charles the sixth their charge is ouer the armour and instruments of warr, therein againe imitating the *polemarchi* in Greece. They haue, as had the *tribunes*, *curam commeatuum castrensum eisque pretium statuunt*; to determine the suites in campe, the constable and marshall hold a court: and a decree in France anno 1356, giueth *cognitionem constabulo & marescallis, personarum actionum inter eos, qui capti in bello fuerint*. By Geruasius Tilburienfis the marshall and constable doe take account of all the stipendary souldiers, giuing them allowance or discharge. They make certificates whether the knights haue serued according to tenure their full terme. The souldiers may not take spoyle vntill the marshall haue cryed *haueock*.

In combats he prepareth the lists, and avoydeth the rout from that circuite, searching the combatants, and giuing them their oathes; and with the constable sitteth there as judge.

The

The last part, which is his compensation for service, is either dignity or fee; by the first he is [as Alciat sayth] *illustris*, and was allowed 9 Richard 2. to carry *virgam auream*; hath a place in the highest bench in the exchequer next the constable, and doeth precede the admirall by statute 31 Henry 8. His fees are either in court or in feild: in the first hee hath for barons, their palfrey or the price; the strays and felons goods within the verge are his duty, for noe priuate freindship can restrayne his office derived from the king's prerogative, and such power doeth 32 Henry 8. warrant; his knight, clerke, and serjeant haue diett in the king's hall; for arrest by *capias*, or *manuprise* he hath eight-pence by statute 2 Henry 4.

In the camp he hath all the amercements of the king's house, as the constable the fines; to him belongeth the goods that are taken, as the armour to the constable: and in combats he hath the lists; and the armes of the vanquished are the constables. And thus much for the marshall's office.

Nº XX.

Of the same.

By Mr. AGARD.

12^o Februarii 1602.

BEFORE the conquest I fynd not that name of Marshall with vs in England, although the exercise of the like office and actions were continually practiced through the realme long before, namely according to the definition of the name, being deriued from *Mars*, the god of warr, and soe by the French called *mareschaux* from *mars* and *haut*: whereof France euer synce they were freed from the government of the empire of Rome, haue appointed for the better

better quiett of that realme, foure especially, who are to command all martiall men in tyme of inuasion, or in tyme of mutiny, to be at their direction, and leuyed for resistance, or for peaceable restoring of the quiett of the countrey.

The like before the conquest was used here in England, as may appeare by fundry auncient legier bookes, and storyes of our realme, whereof I cite some, as followeth.

Knighton a monke of Leycester, who collected a chronicle of our realme, reporteth this of Leofryk Spott, the founder boeth of Coventrey and Burton, and diuers other abbeyes. *Laudabilis comes Leofricus filius Leofwini ducis Merciorum in villa sua de Bromleygh obiit; cujus cum vixit, circumspēctio multum profuit terræ Anglorum.* This man, as appeareth by Hollingshead's report, had the gouernment of all that part of the realme, which was called Mercia, where, vnder the king, he exercised all manner of princely iurisdiction; for soe it appeareth by king Henry the first his laws in the seventh chapter, *sicut antiqua fuerat institutione formatum, &c. generalia comitatum placita certis locis, & vicibus, & difinito tempore per singulas prouincias Angliæ conuenire debere, nec ullis ultra fatigationibus agitari, &c. intersint autem episcopi, comites, vicedomini, vicarij, centenarij, aldermanni, presēti, prapōsiti, barones, uauasores, tungreuij, & ceteri terrarum domini, &c.* but especially comites, quasi comites in gubernatione, which were sometime named *duces*, who had power to leauy as we term it *posse comitatus* upon any seruice offensiue or defensiue for the good of the land; for soe I reade in the story of Elye, that when the Danes entered the land in king Edgar's tyme, *Brithnotus vir nobilissimus Northinhunbrorum dux fortissimus fuit, qui ob mirabilem sapientiam, & corporis fortitudinem, qua se suosque viriliter protegebat, Anglica lingua alderman, id est senior vel dux, ab omnibus cognominabantur; hic dux exercitūs contra Danos eos profligauit, & reliquos ad mare compulit apud Maldinam. Set Dani proximo anno reuersi ipsum cum exercitu suo interimerunt, sub conductu Cuthmundi fil. steilan.* And the same
author

author sheweth him to haue bin a man, of great possessions, for he gaue them aboue tenn manours, which he calleth *Magna maneria*, as Trumpeton, Spaldwich, Ondhill, and many more in Northamptonshire, whose daughter and heyre was married to duke Oswy; and soe it seemeth that these great dukes or counts bare euen the like sway for the peaceable gouernment of the prouinces, as the *mareschaux* of France haue and doe in France: and I find also, that a fine was leauyed before Alwyn alderman.

But leauing them I will come to the first name I find in England. William the conqueror after he had settled the state of this realme in quiett after the battle of Hastings, as the history of Normandy setteth it in these words: *le roy Guillam le Bastart fit Hue de Mortimer son constable d'Angleterre, le quell Hue estoit son parent de per son pe. Et le conte Roger du Montgomery, et le preux Guillam le Fitz-Osberne ces deux ill fit mareschaulx d'Angleterre.* Count Montgomery he appointed to be earle of Shrewsbury, to whom he gaue Shropshire and Montgomeryshire, to the end he should defend the same against the Welchmen: to Fitz Osberne he gaue the earledome of Hereford, that he might doe the like in those parts: soe as they being both valorous men, might by their skill in martiall affayres keepe those parts of the realme in quiett.

But leauing their creation, I will come to touch their offices, by which it will appeare, that they were high officers appointed for martiall matters for the punishment of offenders, and for attendance about the prince boeth in peace and warr.

It appeareth by that booke intituled *de necessarijs scaccarij obseruantijs*, which some call in the exchequer the Red booke, and in the treasury the Black booke, and commonly called *Tilberiensis*; that his place in the exchequer is appointed after these cheife officers: first sett *capitalis iustitia*, whom a writer in king Henry 7th's tyme by his booke [which is in the queenes library of Richmond, whereof I haue a copy] calleth lord high steward of England; then *cancellarius*; then *constabularius*; then *duo camerarij*; then *marescallus*. And these be all that sitt vpon

the first and cheife bench of judgement, before whom I haue found sundry fines leauyed of mens lands, euen by those names, all sauing *justitia*; but to come to his office, I find that the *mareschaux* of England were, and are diuers att this tyme. There are *mareschaulx* in the court of the exchequer, in the king's-bench, in the warrs, and some that hold their land *jure essendi marescallum in die coronationis, & essendi marescallum ad meretrices*; of which I will speake particularly.

In court he is with the aduice and direction of the lord steward, to sett orders for the quiett, seruice, and surety of the prince, and cleane keeping of the court; as I remember, I saw in a booke shewed mee by a worthy person sundry things, which by the marshall were proclaymed in Richard 2. tyme, among which was one, that noe inferior officer should haue his wife follow the court with him. Item, To arrest all malefactours or suspected persons, and them to imprison: and for that purpose I fynd in Henry 4. tyme there was a statute made, directing what pleadings should be held before the mareschall in his court, where a writt is directed to remoue a record out of that court into the king's-bench by these words; *dominus rex mandauit seneschallo, & mareschallo hospitij sui secundum breue suum, quod sub sigillo vestro, &c.* soe as he hath a seale of the court of pleas held before him. All proclamations about the court are made by him or his mareschall, called knight mareschall. I doe not fynd that the mareschall is accomptable for any fines, amerciaments, or forfeitures of goods leauyed by him by virtue of his office, but suppose that the same belong to him of right; for in forfeitures vpon felony, murder, &c. I fynd *unde vicecomes respondeat*; but neuer *unde mareschallus respondeat*. Thus much for court.

Knight
mareschall
the earle's
deputy.

In the exchequer *Tilberienfis* saith, that he is to joyne with the constable, for the taking of accounts for warr matters, and stipends of souldiers, to giue the oath to the accomptant; *fidem ab ipso suscipiat in publico, quod legitimu computum secundum conscientiam suam fecerit*: to take all the tallies of sheriffes and put them in a bag, to the

end

end that they may be entered in the great rolle ; and to keepe in ward all manner of accomptants that be found in arrearages vntill they haue payd ; and to deliuer writts of summons of record, to be conueyed to euery county, and places appoynted, as appeareth by the eighth and ninth chapters of the booke.

In the king's-bench he entereth in by the king's graunt, by these words ; *sciatis, quod dedimus & concessimus Willielmo de Fynborow officium mareschalli in banco nostro ad faciendum, & exequendum omnia, & singula, quæ ad dictum officium pertinent, &c.* soe as what belongeth to him, appeareth not, but is well knowne att this day and practised in the king's-bench ; for warrs he is next to the high steward and constable, the cheife officer hauing charge of all things by his direction, that may tende either to the benefit or fuerty of the army : where he keepeth a martiall court of pleading, as I haue seene in these words : *placita exercitus regis apud werke die mercurij proximo post dominicam in ramis palmarum, anno regni R. E. 24to*, which court was kept in the presence of the steward, constable, and mareschall, as I gather by the pleading : before whom were pleaded trespassses and hurts done by one souldier to another. Item, it appeareth, that it was not lawful for any souldier to arrest one another, but by the mareschall, else punishable. Item, he punished all victuallers that sold regrated, or forestalled victualls. Item, he punished all those that fayled in watching and warding. Item, he made proclamations in the king's name, that none should breake array, or march before the king's standard, or other standards, but by the direction of the constable and mareschall, and inflicted by the said proclamation, punishment or death : insoemuch that the mareschall impleaded one Alelmus de Whelton, for that he thrust out before the standard of the constable and mareschall, contrary to the proclamation made, and attached him by two horses, the which the sayd Alelmus rescued : and by verdict in the same court it was found, that he had transgressed contrary to the proclamation, whereupon itt was alleadged that the sayd Alelmus body should

Placita ex-
eritus R.
No. 24.
E. Rotto. 3.

be committed to prison, there to be att the king's pleasure, *quousque*, &c. and that the mareschall should receaue the two horses by him attached, and by the sayd Alelmus rescued, as forfeited to the sayd mareschall; and many things more there are, insoemuch as he had power to forgiue trespasses; *quia posuit se super misericordiam mareschalli*: But I will not be tedious, I haue brought such collections as I haue out of the sayd pleadings, which who that list may reade.

For tenure of Lands, &c. I omitt.

N^o XXI.

Of the same,

By Mr. DAVIS.

I DOE not hold this office in England to be more ancient then the conquest; for boeth the office, and the name were brought in by the French, though the French perhaps borrowed the name boeth of mareschall and seneschall from the Germans, because I cannot fynd how I may deriue it, either name or word, of the Latine tongue, from which, when it first began to degenerate, boeth the French, Italian, and Spanish were deriued.

That the office is French, it will appeare plainly, if we compare the mareschalls of France, and their power with the office of the earle mareschall of England.

The French haue a double exercise of their office; *puissance de glaine*, as Bodine calls it, and *puissance de verge*; soe haue ours.

The constable of France doeth by his office leade the king's army, and in his absence the mareschalls; soe is it in England.

The mareschalls in France are subordinate, and in the degree of ministers vnto the constable boeth in warr and peace; soe it is with vs.

The

The office of the mareschalls of France was euer personall, and for terme of life, and soe it was adjudged, as Bodine writes, by an arret anno 1361, and that it could not be hereditary, because it is part of the demaine of the crowne of France; soe was it with vs many yeares after the conquest: and albeit Margarett countesse of Norfolk at the coronation of king Richard the second made clayme to the office, as daughter and heyre of Thomas Brotherton; yet it was held then to remayne in the king, and the lord Henry Percy was then receaued to exercise the office for that tyme; and afterwards the lord Thomas Mowbray earle of Nottingham, who as I take it married that lady, had a graunt of that office for his life onely, and after, 9 Richard 2. had another graunt to him and to the heyres males of his body begotten, and soe the office began to be hereditary in that family, which continued vntill the daughter and heyre of Mowbray was married to Howard in Edward 4th's tyme, and after to the family of the Howard's, till the attaynder of the last duke of Norfolk; synce when, the office hath bin twice graunted, but onely for life; first to the earle of Shrewsbury, and after to the earle of Essex. Notwithstanding as well when the office was annexed to a person certaine, being graunted but for life, as when it was hereditary, the earle mareschall had always power to assign the office to a knight for life, whose misdemeanour did not forfeite the office of earle, as appeareth by the booke, case of 39 Henry 6. Sir John Brandon, Sir Thomas Bourchier.

For the exercise of this office it is of two kinds here in England, in warre and in peace; in warre he leades the king's vanguard, and doeth quarter and lodge the army; he keepes a rolle of the names of all the king's souldiers, and therefore when escuage is demanded after a voyage royall, if the tenant alleadge that he went with the king to Scotland, it shall be tryed by the certificate of the earle mareschall; soe vpon an *essoine de seruitio regis*, vpon the mareschall's certificate the *essoine* was warranted.

The

The mareschall was neuer commanded to watch, but his office was euer to relieue the watch; and if any hunting games were made while the army lay in the feild, the constable and mareschall did gouern it, and the constable was to haue all the horned beasts, and the mareschall all the spotted beasts; and if any prisoner did escape from his owner, and were taken by the watch, the mareschall was to haue him as a stray; besides the mareschall was to haue of euery victualler, armourer, taylour, barber, &c. four-pence *per diem*, & *de chescun femme de folie* four-pence *per diem*; and in the course of warr the constable and the mareschall were euer the judges.

In the tyme of peace the marshall also is a principal officer, for to that end the rodd or verge is giuen vnto him att his creation, and is called *virga pacis*; for by his office he is a conseruator of the peace throughout the kingdome, as well without the verge as within: and therefore in the booke of the peace, my lord of Essex, when he was mareschall, was named in euery court, as well as the chancellour and treasurer. But he had speciall iurisdiction within the verge, which is twelue miles round about the tonnel of the king; for soe it is called in the statute of 13 Richard 2.

Ne de catero concupiscatur ad libidinem, he is to cleare the king's house of all disorderly and lewd persons; he is to banish all leud women vpon seuerall paynes, and after [the fourth warning to cutt off their vpper lipp.

He was wont to sitt as a principall iudge boeth in the king's-bench and in the exchequer; for these courts did euer follow the king's household, and soe were euer within the verge, and all prisoners committed by those courts were committed to the mareschall, and therefore by his office he euer had an vnder-mareschall in boeth those courts, which iurisdiction doeth continue to this day; his lodging was alwayes appointed in the house where the king's exchequer was holden, when it was not fixt, but followed the court.

Besides

Besides, the constable and mareschall had a peculiar jurisdiction to decide matters of appeale of treason, by combate, according to the ciuill law, as 37 Henry 6. is, where if one kill the other, he may justify vpon a certificate of the mareschall.

Besides, the mareschall had another court, a clarke and a serjeant, for ciuill contracts arising within the verge, which is called the court of the marshallsey, when one party is of the king's household.

Besides, he is a principall officer at the coronation, and all creations of states. At the coronation he hath the king's and queene's horses, and noe layman may touch the crowne but hee: at creation of any duke, earle, baron, bishop, abbott, priour, and barony, their horses, and of euery knight a demy marke.

The office is grand serjeanty as appeareth in Littleton.

23 Henry 6. precedency giuen to him aboue all earles and dukes, next the duke of Exeter, and noe duke to take place except the king's sonne.

N^o XXII.

Of the same.

By Mr. HOLLAND.

THE *high constable and mareschall* are judges of matters of armes and combates: and at the combate appoynted to be fought between Henry of Bolingbroke, and Mowbray duke of Norfolke, the earle mareschall measured their speares to be boeth of equall length, and then deliuered the one speare himselfe to the duke of Hereford, and sent the other vnto the duke of Norfolke by a knight.

Humfrey de Bohun earle of Hereford, and mareschall of England in the tyme of king Edward the first, was required by the king in the parliament att Salisbury, to pass ouer into Gascoyne with an army; whereunto he replied, that if the king would goe in person he would willingly
goe,

goe, and march before him in the foreward of the battell, as by right he was bound to doe; whereunto the king replied, that he should goe with others though that he himselfe went not; whereunto the earle replied, that he was not bound soe to doe; whereunto the king being angry sayd, By God, Sir earle, thou shalt goe or hange. And I swear, sayd the earle, the same oath, that I will neither goe nor hange, and soe departed from the king without leaue taken.

The widdow of Thomas of Brotherton did write herselfe countesse mareschall of England, as by her charters which I haue here doeth appeare; yet she was but tenant in dower for terme of her life, and olde *Natura Breuium* fol. 5. is expressely against it, because she may not be endowed of an office, which she may not exercise herselfe.

The first earle mareschall that did beare the golden staffe was Thomas Holand duke of Surrey, nephew vnto king Richard the second, as appeareth by the charter in the Tower.

Thomas de Holand dux Surrey, nepos regis habuit officium mareschalli Angliae, ac etiam rex concessit quod idem dux ratione officii sui habeat, gerat, & deferat quendam baculum aureum circa utrumque finem de nigro amilatum, non obstante quod aliquis alius ante hac tempora baculum ligneum portare consueuerit 3 p. 21. Richard 2.

In the tyme of king Edward the third, John of Gaunt tooke the mareschall's rod from Mortimer earle of March, and gaue it vnto Sir Henry Percy, and made a motion in the parliament that there might be no more mayors in London, but that the mareschall of England, as well within the citty as without, might arrest such as had offended; but the Londoners armed themselves and fought for the duke of Lancaster, who that day dined att the house of one John of Ipre, and when word was brought vnto him, that the Londoners being armed did seeke for him, he leapt soe hastily from his oysters, that he hurt boeth his legges against the forme; and wine was offered to his oysters, but he would not drink for haste.

Nº XXIII.

Of the same.

By Mr. THINNE.

I KNOW that in this learned assembly, there can nothing be ouerpassed, what ciuill or common law, or historicall, or record matter may afford, but that will be deliuered by some one, and therefore I might be silent: but synce by order I must say something, although for *aliquid, nihil est*, I will first speake of the verge, and then of some other few Tower records, which somewhat touch the mareschall, omitting infinite things whereunto our question will stretch, if tyme serue to deliuer them.

The mareschall of England hath vnder him immediately or immediately all mareschalls, and officers of martiall matters, as well in warre as peace; soe that some hold, that, out of question, the mareschall of the queene's house is but a member of the marshalley of England, and hath his authority onely within the verge of the king's house; and for that cause it seemeth to mee, that the Saxons hauing their verge, had also this officer; for they be correlatiues; although some constantly affirme the Saxon kings had neither marshall nor vierge, boeth which they say came in with the Conquerour, which I thinke true, if they respect the names onely: but if they consider the nature of the word *vierge* or *virga* amongst the Latines, and the French, they shall fynd it was none other in effect, then *Enp* amongst the Saxons, boeth signifying peace; for this word *virge*, *vierge*, rod, or staffe, as we call it at this day, the *tipstaffe*, did in all ages, and yett doeth amongst all nations, and amongst all officers, signify correction and peace; for by correction follows peace, wherefore the vierge or rod was the ensigne of him which had authority to reforme euill in warre and in peace, and to see quiett and order obserued amongst the people; for therefore beareth the king his scepter. The church hath her pastorall staffe; and other magistrates, which haue

the administration of justice or correction, as haue the judges of the law, and the great officers of the prince's house, haue also a vierge or staffe assigned vnto them, which vierge learned men doe make six fold; that is, *Virga disciplina*, whereby the insolency of wicked men are bridled; *Virga potestatis*, by which he doeth justly gouerne; *Virga cognitionis & scientia*, by which he doeth instruct and teach the ignorant; *Virga custodia*, by which justice, liberalitie, peace, and the laws be obserued and defended; *Virga miserationis*, by which the weake, and such as suffer injuries are relieued; and *virga debellationis*, by which victoryes are obtainned; all which are represented in the golden vierge or rodd, which the marshall beareth: of which vierge or rodd ministering correction in the queene's house, and in a certain circuit about the same, that precinct is called the vierge or peace of the queen's house subject to the iurisdiction of the Mareschall. Which precincte, although it be now greatly enlarged synce the conquest att seuerall tymes, to the compasse of about twelue miles about the Court, yet before the conquest the vierge or Enyr being the king's peace, or the peace of the king's house, did in the tyme of king Athelstan, who began his reigne in the yeare of Christ 930. not extend fully to foure miles euery way; for thus sayth Textus Roffensis, a booke written about the tyme of king H. 1. in the Saxon laws of that king. *Dur þeor real been þær Cynzer gnyr fram his Burgeat þær heir sitanð on þeopen healf his patir iii. Mila 7. .iiii. furlangas. iii. acra brecð, 7. 9. þora 7. 9. Scðrtamanða 7. 9. beene copna.* Which is, thus far shall be the king's peace from his house, where he remayneth on his foure halfe, that is three miles, and three furlongs, and three acres broad, and nine foote, and nine shaftements, and nine barley cornes. By these words, on his foure halfe, is meant on the king's behalfe euery way East, North, West, and South from the king's house. Thus much for the vierges antiquity.

The records be these:

That Roger Bigod earle mareschall surrendered his office to his nephew Roger Bigod, whom the king accepted as
earle

earle mareschall, whereof the record is: Memorandum quod in crastino inventionis sancte crucis anno regis Henrici filij Johannis 54. Venit Rogerus Le Bigod filius Hugonis Le Bigod, nepos Rogeri Le Bigod com. Norff. & mareschalli Anglia cum literis ejusdem Rogeri pendentibus huic rotulo, per quas idem comes rogavit Dominum regem, ut ad officium mareschalcie nomine predicti Rogeri comitis faciend. dilectum nepotem suum dominum Rogerum Le Bigott predictum, suum facit attornatum, quem idem comes ad dictum officium exequendum, nec non illum, quem in hoc loco posuerit, admitteret, sicut in literis predictis plenius continetur. Et dominus rex habito sup. hoc tractatu cum domino Edovardo filio suo, ipsum admisit ad officium mareschalcie nomine predicti comitis faciend.

Henry the Third had continually seven mareschalls attending vpon him in his court, each receauing yearely twenty marks pay, anno 53 H. 3.

A certificate out of the Exchequer for fees and allowances aunciently belonging vnto the earle mareschall, and to his vnder minister of the king's house 11 Edw. 2. which proueth the mareschall of the king's house, but vnder minister to the earle mareschall, as I for this tyme condeine it.

The king seyzeth the office of the mareschall into his hands for the escape of a prisoner out of the Marshalley, whereof this is the record: Williclmus Weldour mareschallus coram domino rege per comitem mareschallum, constituitus in presentia domini regis die martis in festo apostolorum Simonis & Jude hoc anno arreynatus fuit, & allocatus. Vbi Johannes at Berptie, qui pro morte trium hominum de com. Deuonia per ipsum Johannem felonice interfectorum, &c. pro facto, &c. attachiatus fuit, & prisione Mareschalcie in custodia sua occasionibus predictis mancipatus extitit, cognouit, quod ipse non habet ipsum Johannem in custodia sua ad presens, nec ipsum habere potest, per quod dominus rex saisiri fecit virgam in manum suam, & illam Rogero at Water seruienti suo commissit ad officium mareschalcie custodiendum, & sacramentum ab eo ad fidelitatem deseruiend. in officio predicto

coram iusticiarijs suis facere precepit, & dictum Willielmum gaolæ commissit, voluntatem ipsius domini regis commorand. &c. Liber Rubeus parliamentorum in Turri London iremanent. Within three yeares after which also the same king Edw. the 2. in the sixth yeare of his reigne, as hath the record, restored the office of the lord mareschall, which before he had lately seized into his hands for want of attendance.

The office of constable being voyd, certaine persons are by commission appointed to sitt judicially with the lord mareschall for the hearing and proceeding *secundum legem, & consuetudinem armorum super* *cujusdam prisonarij,* 44 *Edw. 3.* By which it appeareth that the marshall's court is a court military, to determine matters military according to the law of armes.

Lastly, I fynd many deedes of Sir Oliuer Maleuerer, who writeth himselfe therein mareschall of England, when, as appeareth by the booke and muniment of the earle of Kent, he was but then deputy to Ralph Neuill earle of Westmerland, and mareschall to heare the cause in controuersy between Reynold Grey of Ruthen and Edward Hastings, for bearing the armes of Valence and Hastings of Penbroke. In which booke it further appeareth, that the mareschall of England is deputy, or vnder officer of the constable; for John duke of Bedford constable of England did direct his precept to Ralphe Neuill earle of Westmerland, to summon Sir Edward Hastings to answer Reynold Grey of Ruthen in the mareschall's court, &c. wherewith I will now end, although I could deliuer vnto you what fees belonged to the mareschall in peace, and in the warrs, as all the spotted beasts and such like, and that in some part of his office our mareschall is the same officer, and hath the same jurisdiction in England, that *rex ribaldorum*, as Tillet termeth him, or king of harlots, as Chaucer in the romance of the Rose entituled him, hath in the court of France.

N^o XXIV.

Of the same.

By ANONYMOUS.

12^o Febr. 1602.

- I. **O**F the name and antiquity of earl Marshall.
- II. Of the diuersity of graunts, commissions, and patents of the office.
- III. Of the honour, authority, fees, and allowances belonging or enjoyed with the Office.

Touching the name I will say little, leauing it to others, who I know come better prouided, onely it seemeth by generall consent to be deriued of *mars*, *martis*, and to take the name as an officer of warre, whereof Matthew Paris speaking of William Marshall earle of Penbroke sayth: *Memoratus itaque Willielmus, utpote bellicosus, & Arenarius marescallus, quasi martis seneschallus*. To this may allude the last strayne of the two verses made for the sayd William his epitaph, as is remembred in two seuerall places of the same booke, which verses one Ieruasius de Melkela, as it were taking vpon him the person of the same William, is sayd to haue made, and soe may seeme to be more pertinent to his person then to this, and are, I thinke, common to most men, viz.

*Sum, quem Saturnum sibi sensit Hibernia, Solem
Anglia, Mercurium Normannia, Gallia Martem.*

For the antiquity thereof, the auncientest mareschall of England, that I fynd, is William Fitz Osburne marshall to William the Conquerour, made by him earle of Hereforde and lord of the Isle of Wight, whose daughter and heyre was marryed to Riuers earle of Exeter, as appeareth by the booke of Barons synce the conquest, collected and written in this queene's tyme, and made by [as it is sayd] Robert Cooke Clarencieux.

*Touching the diuersity of commissions, graunts, and patents
of the said Office.*

Some during pleasure in this forme.

As that 3 Sept. 1 E. 2. to Robert de Clifford *de officio mareschalcie Anglia habendum & custodiend. cum omnibus, &c. quamdiu regi placuerit*, with a mandate to the treasurer and barons of the Exchequer, *quod ipsum quem prædictus Robertus posuerit loco suo ad faciend. ea quæ ad officium illud pertinent, in eodem servitio in loco ipsius Roberti recipiant.*

The like the same yeare to Nicholas de Segraue, and diuers others att other tymes hereafter mentioned.

Another of king Richard the 2. anno 3. to Thomas Holand in another forme, viz. in these words: *Constituimus Tho. Holand fratrem nostrum marescallum nostrum Anglia, capiend. in eodem officio feoda ad dictu. offic. &c.* with this further clause: *Volentes quod ipse officium illud, & quicquid ad illud pertinet per se, & suos deputat. idoneos debite gubernare, & exercere possit quamdiu in officio steterit su-
pradicto.*

Sometime it seemeth some haue bin admitted to that office for some especiall tyme, as for a coronation, for a tyme of combate, or other like honourable solemnities; as namely, 20 R. 2. the same Thomas Holand then duke of Surrey supplied the same office, vpon the occasion of the accusations and appeale between the duke of Hereford and Thomas Mowbray duke of Norfolk then earle mareschall, by patent of inheritance, as hereafter ensueth, which, as other great offices, haue bin bestowed for the space of a day; as at the combate then appointed, it is sayd the duke of Aumarle was for that day constable of England; and whether these were by graunt I haue not seene: but it seemeth the mareschall might haue his office, by deliuering him the rod, a ceremony in other offices to inuest them therein, as by deliuering white stauces to the principall officers of the king's household. And as Mathew Paris writeth in king H. 3. tyme of Gilbert, one of the sonnys of William Marshall earle of Penbroke, viz. *Gilbertus marescallus frater, & hæres Ricardi comitis mareschall.*

reschall. venit ad regem protestans mortem fratris sui, & postulavit ab eo, ut ipsum in hereditat. suam reciperet, offerens homagium suum regi, & quicquid ei, ut domino facere tenebatur. Tunc rex intercessione & consilio archiepiscopi reddidit ei hereditat. suam totam, tam in Anglia, quam in Hibernia, & homagium ejus recepit, atque post hac in die Pentecostes apud Vigorniam eundem Gilbertum cingulo cinxit militari, tradens ei virgam mareschalcia curia sua, sicut moris est, & sicut eam antecessores melius & libere habuerunt.

Yet also some of their great offices are graunted by patent for a day, as the office of the lord high steward of England was to John lord Russell lord priuie seale at the coronation of king Edw. 6. *Habend. per spatium unius diei tantum, videlicet, ab ortu usque ad occasum solis ejusdem, &c.* which patent I have seene, and obserued the like in records of others. Of later tyme in her majesty's reigne commissions *durante beneplacito* haue bin made for determining and doeing diuers things concerning the office of the earle mareschal, to seuerall persons; as after the decease of Gilbert earle of Shrewsbury earle marshall, such a commission was graunted to William lord Burghley lord treasurer, the now lord Admirall, Henry lord Hunsdon lord chamberlaine; and as I take it, to the now lord treasurer. And the like at this present, is in force to the lord treasurer, lord admirall, and earle of Worcester.

Another graunt I fynd of the same office with another limitation, 11 H. 6. to John earle of Huntington, viz. *Officium mareschalcia Anglia habend. per se vel, &c. durante minore etate Johannis filij, & heredis Johannis nuper ducis Norff. in custodia existentis.* It standeth with great reason the king should soe dispose thereof, or else hee and his realme may bee vnserued, when offices of inheritance of justice, and especiall seruice descend vnto infants, as the constable, the mareschall, the great chamberlaine, and others inferiour, as sheriffewicks, haue bin giuen and held, of which sort, at this day, the office of the lord great chamberlaine in the now earle of Oxford, and the office of sheriffe of the county of Westmerland, in the now earle of Cumberland,

Cumberland, are hereditary, which were boeth the queene's wards.

Some haue held the same office for life,

As *Willielmus de Monte Acuto comes Sarum*, had the same 12 E. 3. of the graunt of that king *ad terminum vite*. And R. 2. made a graunt to Thomas earle of Nottingham of the office of mareschall of England, *habend. ad totam vitam suam*. Of which sort are diuers others.

Of graunts of inheritance.

Rogerus Bygod com. Norff. & mareschallus Angliae, by his deed dated 12 Martij 30 E. 1. enrolled in the Tower: *Reddidit & remisit, &c. eidem regi quicquid juris, honoris, & dominij nostri comit. in comitatu Norff. & mareschalciam Angliae habend. &c. eidem regi, & heredibus suis, cum omnibus & singulis ad ea qualitercunque pertinentibus*. And 12^o Julij. following, a regraunt from the same king by the same words to the said Roger, and the heyres of his body.

After the sayd office came againe to the crowne, Edward the Second maketh the like graunt to his brother Thomas de Brotherton earle of Norffolke, viz. *Mareschalciam Angliae cum omnibus ad ea pertinentibus, habend. sibi, & heredibus masculis de corpore, faciend. inde regi, & heredibus, seruicia quae progenitoribus suis quondam regibus Angliae debebantur, ante quam ea mareschalcia ad manus patris sui per donationem, &c. Rogeri de Bygod deueniret*.

King Richard the Second, 12^o Januarij anno 9. reciting the aforesayd graunt for life made to the sayd Thomas earle of Nottingham, viz. by the words *officium mareschalli, Angliae, de vberiori gratia concessit eidem Thoma officium praedictum, vna cum nomine & honore comitis mareschalli, habend. sibi, & heredibus masculis de corpore, &c. cum omnibus feod. &c.*

One other the like I haue seene in the rolles, 28 Junij, 1 R. 3. to John Howard duke of Norffolke, and to the heyres males of his body. Others of inheritance, hauing made some search, I haue not found.

The first
name of
earle mareschall.

Of

of the honour, authority, fees, and allowances belonging,
enjoyed, or held with the sayd office.

1. The chiefeft power and authority thereof hath bin obserued for warrs, as namely William Marshall earle of Penbroke in the beginning of king Henry the 3. tyme is sayd to be generall of king John's army: It is also sayd in Mathew Paris, shortly after the entrance of king H. 3. to the crowne, as followeth: *Willielmus marescallus regis custos conuocari fecit omnes castellanos ad regem spectantes, & milites qui erant in praesidijs castrorum in partibus diuersis, ut ad Newerc ad edictum regis conueniant, ut pariter cum ipsis obsidionem castri Lincolnens. dissoluere laborarent.* It seemeth further by the history of that king, that this man as well by his office and place, and for that the king was young, had the whole management of the warrs during his life; and soe his sonne William holding the title after him, had in Ireland and Wales against prince Leoline and others; he being the cheife commander of the warrs, and by the same Matthew Paris writing of his death, is termed to be *in militia vir strenuus.*

Hollingsf.
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It seemeth of auncient tyme it was an high office, and the estate thereof, as that of the iustice of England, lord high steward of England, and constable of England, which haue decayed and growne out of use: but this office, though now more in use, and the authority thereof better reteyned then that of the others, yet are other officers of later tyme growne of higher ranke, which were inferiour, as the lord treasurer, and the lord priuy seale, who togeather with the steward of the house were 20 R. 2. in the patent of Thomas earle of Nottingham of this office of earle mareschall, all three written after Barons, viz. *Testibus Tho. archiepiscopo Cant. R. London. Tho. Winton. Jo. Elien. E. Exon. cancellario: episcopis Jo. Aquitan. & Lancastr. Edm. Ebo. ducibus avunculis nostris. Henr. Derby. Ed. Rutland. Henr. Northumbr. comitibus. Reg. Grey de Ruthyn. Rad. de Neuill, Jo. Luell, militibus. Rog. Walden decano Ebo. Theauf. nostro. Tho. de Percy seneschal. hospitij. Guidon Mone custod. priuati*

figilli. This office hath also an higher title than any, viz. earle mareschall, whereas the rest are called lord treasurer, lord steward, &c. and I think that this title of earle mareschall began in the sayd graunt of 9 Richard 2. to the earle of Nottingham, which importeth, as I conceaue, because Thomas de Brotherton sonne and brother to two kings had it not in his patent, nor Roger Bigod, whose patent is the eldest that I haue reade, that therefore none before had that title. William Marshall is sometyme called earle marshall, but being earle of Penbroke, it might soe be added to his stile or title, and cannot otherwise be allowed, vnales the graunt were extant to proue it.

This hath bin also a great office for authority and gouernment, as that in Mathew Paris of the sayd William Marshall in these words; *post mortem regis Johannis Henricus tertius coronatur, & remansit in custodia Willielmi comitis Penbrok, magni videlicet mareschalli, qui misit literas ad omnes vicecomites regni Angliæ & castellanos, præcipiens singulis, ut regi nuper coronato essent intendentes, premittens omnibus possessiones pariter, & donaria multa, ita ut dicto regi fideliter adhererent;* and in another place *Willielmus marescallus regis custos, & regni;* and in another place, at his death, *Willielmus senior marescallus regis, & rector regni;* which high titles for the greatnes of his office, and for his worthyness were ascribed vnto him. Mr. Lambert writeth in his booke, the lord chancellor, lord keeper of the great seale, the lord steward of England, the lord mareschall, and constable of England, &c. haue closed in their offices a creditt for conseruation of the peace ouer all the realme, and may award precepts and take recognizances for the peace, and voucheth Marrowe and Fitzherbert.

By the statute of 13 Richard 2. cap. 2. the mareschall is admitted as a iudge by these words: if any will complaine, that any plea be commenced before the constable and mareschall, that might be tryed by the law of the land, the same complaynant shall haue a priuy seale of the king, without difficulty, to the constable and mareschall, to surcease.

And

page 183.

page 12.

In record,
infra Tur.
London.

And 18 Edward 3. the king addressed a writt to the treasurer and barons of the exchequer in forma sequenti: *Edwardus Dei gratia rex Angliæ & Franciæ, & dominus Hiberniæ, thesaurario & baronibus suis de Scaccario salutem; volentes certis de causis certiorari tam de feodis, quam aliis quibuscunque quæ pertinent ad officium comitis mareschalli, & mareschaliæ Angliæ, tam in Scaccario nostro, & in alijs placeis nostris & in hospitio nostro, quam alibi in Angliæ, sue extra, tam guera, quam pacis temporibus, ac de terris & redditibus, &c. whereupon was certified inter alia videlicet.*

Item in Rubeo libro Scaccarij, in quo annotatur, qualiter officarij, & ministeriales regis seruiuerunt, & quid ad eorum pertinuit officium die coronationis Alianoræ quondam reginæ Angliæ uxoris regis Henrici filij regis Johannis, continetur sic.

De officio mareschaliæ seruiuit Gilbertus Mareschallus comes de Strigul, cujus est officium tumultus sedare in domo regis, liberationes hospitiorum facere, ostia aulæ regis custodire. Recipit autem de quolibet barone facto milite a rege, & quolibet comite eo die palefridum suum cum sella.

Item mareschallus in Scaccario, ad cujus curam inter alia pertinet, tallias debitorum quas vicecomites redaxerint, & quæ annotantur in rotulo, mittere seorsum forulo suo, & debitores non facientes de summonitione, qui meruerint comprehendere seruare, & soluto Scaccarii diei, si voluerit in carcerem mittere custodiæ publicæ, non tamen in vinculis: percipit ex antiqua consuetudine de singulis hujusmodi debitoribus, dum in custodia sua fuerint quolibet die dimidiam marcam, de hijs quæ pertinent ad officium mareschalli aliud penes Scaccarium non comperimus.

*Inferiour offices in the guist of the earle mareschall
by graunt.*

The former mentioned graunt of 9 Richard 2. to Thomas earle of Nottingham is recited in a new graunt of 20 Richard 2. with these words added: *volentes proinde pro statu, & honore ipsius comitis uberius providere, concessimus, &c. dicto comiti dictum officium, &c. habendum sibi,*

Et. cum omnibus officijs commoditatibus, Et tam in curijs nostris, quam alibi eidem officio spectantibus, Et. Et adeo plene, libere, Et. sicut Thomas de Brotherton, comes Norffolk, Et. seu Rogerus le Bigott, Et. habuerunt, Et. volentes ulterius, Et. quod officium mareschalli in banco nostro, quod Johannes Wykes tenet ad terminum vite sue ex concessione nostra, Et officium mareschallum in Scaccario nostro, quod Ricardus Gascoygne tenet ad vitam ex concessione fratris nostri Thomæ comitis Cant. nuper mareschalli Angliæ, ac etiam officium proclamatoris mareschalli coram seneschallo Et mareschallo hospitij nostri, quod Guido de Allesley tenet ad vitam ex concessione Edwardi nuper regis Angliæ avi nostri, quæ quidem officia post mortem prædictorum Johannis, Ricardi, Et Guidonis ad nos, Et hæredes nostros reueri debent, remaneant præfato comiti mareschallo, habenda sibi, Et dictis hæredibus suis masculis imperpetuum. The very like words for those offices are conteyned in the graunt of the sayd office to John Howard duke of Norffolk i Richard 3. in which graunt of 20 Richard 2. there is this further clause, videlicet: consideratis insuper strenuitate, Et nobilitate ipsius comitis, Et ut ipse officium prædictum decenius Et honorificentius de cætero facere valeat Et exercere, concessimus, Et. eidem comiti, quod ipse Et dicti hæredes mareschalli Angliæ ratione officij prædicti habeant Et gerant, Et deferant tam in præsentia nostra Et hæredum nostrorum, quam, in absentia quendam baculum aureum, circa utrumque finem de nigro annelatum, Et cum signo armorum nostrorum in superiori fine dicti baculi, Et cum signo armorum dicti comitis in inferiori fine ejusdem baculi ornatum, non obstante quod idem nunc comes tempore suo, seu præfati comites Norffole vel cantij, vel aliquis qui dictum officium mareschalli Angliæ ante hæc tempora habuerunt, ligneum baculum portare, seu deferre consueuerunt. For the matter and manner of the sayd rodd the patent of 1 Richard 3. doeth agree; in which patent of Richard 3. beginneth the fee or annuity of twenty pounds per annum; it appeareth also by an inquisition of 13 Henry 4. quod Tho. dux Norffolk defunct.

tenuit dictum officium una cum officio seruientis mareschalli, nec non officium clerici mareschalli in curia mareschalli hospitij domini regis, & alibi, &c. quæ quidem officia spectant, & pertinent a tempore, de quo non existit memoria, &c. dicto officio mareschalli Angliæ.

And further in 9 Edward 2. and 18 Edward 3. vpon certificates out of the exchequer into the Tower vpon the like writts as aforesayd, touching the fees of the mareschall of England in the king's house, it appeares as followeth: quod magister mareschallus percipere consuevit, & habere consimile feodum, sicut Henricus de la Pomray, si extra domum comederet, 2 d. in die & unum simenellum sal. & unum sextar. vini expens. & unum Cereolum, &c. 24 frust. candel. si autem intra, 14 d. & dimid. sextar. vin. expens. & candel. plenarie: et quod quatuor mareschalli, qui seruiunt familie regis, tam clericis, quam militibus, quam etiam ministris die qua faciunt herbergeriam, vel extra cur. morantur in negotio regis, 8 d. in die & unum gallo. vini expens. & 12 frust. candel. si intra, 3 d. in die hominibus suis in die & candel. plenarie. quod si aliquis mareschallorum missus fuit in negotio regis. 8 d. tantum: seruientes mareschallorum si fuerint missi in negotio regis, unusquisque, 3 d. in die; sin autem in domo regis, comedentur. With this further clause in the certificate of 18 Edward 3. viz. magister mareschallus similiter, et præter hac debet habere dicas de donis, & liberationibus, quæ fuerint de thesauro regis, & de sua camera, & debet habere dicas contra omnes officiales regis, vt testis per omnia.

N° XXV.

Of the same.

By ANONYMOUS.

FOR the etimology of mareschall, I hold it the soundest opinion, that he hath his name of gouernment of the horses, since Tillius in his second booke of the commentaries of France writeth this person to be *magister equorum*, saying, *mareschalli vero erant hippocomi, composita voce ex sermone inferioris Germaniæ, ubi marre equum significat. schallk vero seruum, vel officialem ut sit is, qui præest equis maioribus*; which deriuation is found in the laws of king Clotharius giuen vnto the Almaines, whereunto agreeth Beatus Renanus, saying, the word mareschall is made a *marca antiquo vocabulo equum significante*, as hath Paulanias, saying, that the Galli that came into Greece with Brenus had this word trimarca, signifying the sight of three horses, for they called a horse marca, and to this day the Welchmen call a knight or horseman marcogh; and amongst vs in England in the tyme of Henry 3. the stable of horse was called mareschalcia, as Matthew Paris writeth, that the mareschall of Guy of Lusignian, halfe brother vnto Henry 3. did say vnto the porter of St. Albans, when the sayd mareschall did come for lodging and horseroome for his master in that house, *ubi est mareschalcia ad equos nostros stabulandos, & monstratum est ei longum stabulum hospitij*; yett some there are which hardly, and beyond reason deriue this word mareschall of marcke, which by Ansigisus is taken for a limitt and bound, as Belforest who thinketh better, that these mareschalls, magistrates of warre, should be called judges of limitts and frontiers, then judges on horseback, as Budæus would haue them; if that were soe, they should rather be called a marques then mareschall; for they tooke their name from *marca* a limitt or bound. This office was belonging to the emperours of Constanti-
nople, but by the name of *protosator*, whose office was to hold
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the emperour's horſe, and to leade him to the gate of the palace, which *protoſtrator*, Nicetas Choniates ſpeaking of Joſfridus in the life of Baldwinus Flandrus, doeth make to be mareſchall, whom he calleth *μαριſχαλλος* in this ſort *μαριſχαλλος ἦν ταξίωμα ὁ ἀνὴρ, ὁποῖοι δὲ κατ' ἑλλήνας ἡ φωνὴ τὸν πρωτοſτρατῶρα; mareſchallus ſignificat virum exercitus ordinem diſponentem, græce protoſtrator, that is, qui caſtris præſſe dicitur.* This mareſchall, ſoe termed as well in England, as in Germany, France, and other places, was to haue the gouernment of military forces, eſpecially of horſemen, though boeth of horſe and foote, and to haue the marſhalling and ordering of the campe, from which this word marſhalling is metaphorically uſed amongſt vs, in placing of men at great aſſemblyes, and matters of armoury, when the herald ſayth, he marſhallet ſix or ſeauen coates.

For the authority and office of the mareſchall here in England, I referre you to Fleta, lib. 2. cap. 4 & 5. and to an old rolle in French, intituled, The cuſtomes of Thomas of Brotherton mareſchall of England, and to the Red booke of the exchequer fol. 30. in all which is a liberall diſcourſe of his office, authority, fees, preheminence, and other matters belonging to him, as well in peace as in warre. For the firſt whereof he is called by Budæus *tribunus militum*, by the French the maſter of the campe, by the Italians maſter of the horſemen, whoſe authority amongſt the French [as it was alſo in England; for moſt of our laws and cuſtomes are drawne from thence] is ſett downe at large in Belforeſt in the firſt tome of his works, treating of the officers of the houſe of France, ſaying, that it appertaines to the lords conſtable and mareſchall of France, or their leiutenants at the marble table to hold plea, and to haue the examination of all offences, as well of horſemen as footemen, as well of the campe, as ſuch as goe and come, as of ranſomes, bootyes, and all debates ariſing thereof, of priſoners taken, of ſuch as take wages and runne away, of ſuch as diſobey their ſuperiours, and to conclude, of all præeminences, authority, and power belonging to the conſtable; for he doeth in all military cauſes, as aſſiſtant to

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the constable being present, and as his deputy being absent, communicate with the constable; whereunto consenteth Scipio Ammirato in the Neapolitan families.

But to come to our mareschall of England, he hath now to his more state, a rod of gold deliuered him at his creation to beare always with him; the first that by patent had that golden rod [for before it was of wood, such as the mareschall's mens tipstaues be] was in the tyme of Richard 2. who in the 22d of his reigne, making Thomas duke of Surrey mareschall of England, did insert into his patent these words; *consideratis insuper strenuitate, & nobilitate ipsius ducis de Surrey, ut ipse officium prædictum decentius & honorificentius de cætero facere valeat, concessimus pro nobis, & hæredibus nostris eidem duci Surrey, quod ipse ratione officij sui habeat, gerat, & deferat, tam in præsentia nostra, quam in absentia, baculum aureum circa utrumque finem de nigro ammulatum, & cum signo armorum nostrorum in superiori sine dicti baculi, & cum signo armorum ipsius ducis Surrey in inferiori parte ipsius baculi ornatum, non obstante quod præfati nuper comites, aut aliquis alius, qui dictum officium mareschalli Angliæ antehac habuerunt baculum ligneum portare consueuerunt.* And because I am entered into records, I will deliuer one record more of a mareschall of England, that it may appeare how vnfit it is, that offices of judgement should be granted to persons and their heyres, without speciall prouiso therein: for after that Charles Brandon duke of Suffolke had surrendered the patent of the mareschalcy of England, and that Henry 8. had granted the office to Thomas Howard duke of Norfolke, and his heyres, there was a prouiso put in the grant thus; *prouiso semper quod si contingat in posterum, aliquos hæredes masculos prædicti ducis inhabiles, invalidos, vel impotentes fieri, ratione minoris ætatis, agritudinis, debilitatis corporis, seu membrorum, vel ratione fatuitatis, vel lunaciæ, ita quod officium ad honorem regie majestatis, & regni utilitatem exercere nequeant, tunc volumus, quod in hujusmodi casibus distributio & donatio officij, pro hac vice tantum, scilicet dum dicti hæredes infra ætatem existunt, aut villo modo inhabiles*

inhabiles fuerint, ad nos, & successores pertineat, & spectet, ita quod semper, cum ad etatem pervenerint, & validi fuerint, & habiles ad officium exercendum, quod tunc hujusmodi heredes habeant, teneant, & gaudeant. Yet former records were, that the same office being granted to heyres generall, noe such exception was had, but that the same office descended to women, who executed it by their husbands and sonn, as did the Bigotts, which came to the same by the marriage of the eldest daughter of William earle of Penbroke, mareschall; and the Mowbrays, who had the same by Margaret countesse mareschall their grandmother, daughter, and heyre of Thomas of Brotherton earle of Norfolke, and mareschall of England.

And soe I will conclude with one record more concerning the virge of the prince's house, for that also is a secondary office extracted from the mareschall of England, who hath further the guift of the mareschall of the exchequer, of the king's-bench, and other inferiour offices belonging to his place; how the protectour, or guardian of England, in the king's absence, shall hold the virge by the compass of twelue miles, and execute all things within the same, as were done, when the king himself was present in person, and that the king had his proper virge; for Edward 3. in the 46 yeare of his reigne [as appeareth in the patents of that yeare, membr. 23.] making Richard the sonn of the black prince, custos, or warden of England, whilst the king passed the seas, did write vnto his steward and mareschall of his house thus; *pax nostra ubique infra regnum Anglia, & maxime infra virgam hospitij dilecti, & fidelis nostri Richardi filij charissimi primogeniti nostri Edwardi principis Aquitanie, & Wallie, custodis Anglia, videtur per duodecim leucas in circuitu ejusdem hospitij, dum nos extra ipsum regnum morari contigerit, inuiolabilis.* Lest I should be too tedious, here I will end my simple discourse.

Liberatio navium per comitem marescallumRot. Pat. anno XXVI^o H. III. m. 3.

REX omnibus, &c. salutem Sciatis quod nolumus quod per liberationem navium quam Walterus Marescallus comes Pembrochiæ fecit vel per liberationem quam H. de Bohun comes Essexiæ & Hertfordiæ fecit contra transfretationem nostram in Vasconiam anno &c. 26 apud Portesmutham aliquid juris neutri ipsorum accrescat sed quam citius intendere poterimus in partibus transmarinis vel citra volumus quod plenius inquiratur utrum ad ipsum comitem marescallum tantum vel ad ipsos ambos in communi pertineat predictarum navium liberatio Incujus &c. teste rege apud Portesm. vii^o die Maij.

Pro senescallo et marescallo hospitii regis.

Rot. Pat. anno LIV. Hen. III. m. 20.

REX dilecto clerico suo Petro de Winton. custodi garderobæ suæ salutem Licet de consensu & assensu nostro & totius consilii nostri provisum sit et unanimiter concessum quod omnia feoda quæ percipi consueverunt ad scaccarium nostrum cessent & quod nemini aliud ibidem nomine feodi liberetur Nos tamen dilectis & familiaribus militibus nostris Willielmo de Wintershall & Willielmo Aette senescallis nostris. & Willelmo Belet & Radulpho de Bakepus nobis in mensa fervientibus & intendentibus & Stephano de Edeworth Willielmo de Faukeham Galfrido de Percy Waltero de Burgh Rogero de Wantham Gilberto filio Hugonis Petro Everard marescallis nostris pro eo quod ipsi juxta latus nostrum nostris jugiter intendunt obsequiis gratiam facere volentes specialem concessimus prefatis Willielmo de Wintershall quadraginta marcas Willielmo de Aette viginti marcas Willelmo Belet viginti marcas Radulpho de Bakepus viginti marcas Stephano de Edeworth viginti marcas Willielmo de Faukeham viginti marcas Galfrido de Percy viginti marcas Waltero

Waltero de Burgh viginti marcas Rogero de Wanthan viginti marcas Gilberto filio Hugonis viginti marcas Petro Everard viginti marcas singulis annis percipiend. de Garderoba nostra pro vadiis suis videlicet unam medietatem ad festum Paschæ et aliam medietatem ad festum sancti Michaelis quamdiu steterint in servicio nostro in officiis predictis Ita quod si alicui eorum provideamus de warda vel escaeta aliqua quæ nobis accedere poterit tantum decedat ei per annum in vadiis predictis quantum warda vel escaeta illa valeat per annum vel etiam ad vendendum præ manibus Et ideo vobis mandamus quod eis vadia sua singulis annis ad eosdem terminos habere faciatis de Garderoba nostra predicta in forma supra predicta Nos enim vadia illa vobis in compoto vestro volumus & faciemus allocari Teste rege apud Westm. xxv^o die Marcii.

Mariscall. Ang. fac. deputat.

Rot. claus. anno LIV^o H. III. in dorso, m. viii.

MEMORANDUM quod die dominico in crastino invencionis sanctæ Crucis anno &c. 54 venit Rogerus le Bygod filius Hugonis le Bygod nepos Rogeri le Bygod com. Norff. & marescallus Angliæ cum literis ejusdem pendentibus huic Rotulo per quas idem comes rogavit dominum regem ut ad officium marescalciæ nomine predicti Rogeri comitis faciend. dilectum nepotem suum dominum Rogerum le Bygod predictum suum facit attornatum quem idem comes ad dictum officium exequend. nec non illum quem ad hoc loco suo posuerit admitteret sicut in litteris predictis plenius continetur Et dominus rex habito super hoc tractatu cum domino Edwardo filio suo ipsum admisit ad officium marescalciæ nomine predicti comit. faciend. quamdiu eidem domino regi placuerit et pro bono et fidei servicio quod predictus Hugo pater suus regi impendit rex concessit eidem Rogero nepoti predicti comit. quod aliquem fidelem loco suo ad officium illud faciend. deputare possit ad voluntatem domini regis Præsentes fuerunt prædictus

R 2

dominus

dominus Edwardus W. de Bello campo com. Warr. Rogerus de Mortuomari Robertus Waler Robertus Aquillon Reginaldus filius Petri Walterus de Morton Reginaldus de Grey et plures alii magnates Teste rege apud Westm. iiii^o die Maij.

Literæ Rogeri Bygod.

Egregio principi domino suo reverendissimo domino Henrico Dei gratia regi Angliæ domino Hiberniæ et duci Aquitaniæ suis si placet marescallus Rogerus Bygod com. Norff. salutem & debitum pro veribus famulatum ad officium marescalciæ nostro nomine faciend. dilectum nepotem meum dominum Rogerum Bygod meum facio attornatum quem ad dictum officium exequendum nec non illum quem ad hoc loco suo posuerit admittere vestræ excellentiæ placeat reverenda valeat excellentia vestra.

Thomas de Brotherton com. Norff. de feodis marescalli.

Rot. claus. anno XI^o Edw. II. in dorso. m. xxv.

REX senescallo hospitii sui & custodi garderobæ suæ salutem Transcriptum cuiusdam certificationis super quibusdam feodis quæ marescalli Angliæ qui pro tempore fuerunt et eorum ministri tempore progenitorum nostrorum quondam regum Angliæ de hospiciis eorundem progenitorum nostrorum percipere consueverunt quam quidem certificationem thesaurar. et barones nostri de Scaccario nobis ad mandatum nostrum miserunt vobis mittimus presentibus interclusum mandantes quod inspecto transcripto predicto dilecto fratri & fideli nostro Thomæ de Brotherton com. Norff. et marescallo Angliæ & illis quos ad officium marescalciæ constituerit loco suo feoda huiusmodi habere fac. Teste rege apud Nottingh. xv. die Julij.

REX thesaurar. & baronibus suis de scaccario salutem Volentes certiorari quæ & cuiusmodi feoda marescalli Angliæ qui

qui pro tempore fuerunt & eorum ministri temporibus progenitorum nostrorum videlicet de pane vino cereolis & candelis percipere & habere consuaverunt vobis mandamus quod scrutatis rotulis et aliis memorandis dicti Scaccarii nostri de eo quod deinde inveneritis nos sub sigillo ejusdem Scaccarii distincte et aparte sine dilatione reddatis certiores hoc breve nobis remittentes. Teste rege apud Westm. tertio die Junij.

Excellentissimo principi ac domino suo reverendo domino Edwardo Dei gratia regi Angliæ illustro domino Hiberniæ & duci Aquitaniæ devoti sui thesaurar. & barones de Scaccario suo fidele semper obsequium cum omni reverentia & honore mandavit nobis vestra dominatio reverenda quod scrutatis rotulis & aliis memorandis Scaccarii vestri vos redderemus certiores quæ et cujusmodi feoda marescalli Angliæ qui pro tempore fuerunt et eorum ministri temporibus progenitorum vestrorum quondam regum Angliæ de hospitibus eorundem progenitorum vestrorum videlicet ut de pane vino cereolis & candelis percipere & habere consueverunt Super quo sciat vestra excellentia reverenda quod scrutatis rotulis & memorandis dicti Scaccarii vestri comperimus quod magister marescallus percipere consuevit & habere consimile feodum sicut Henricus de la Pomeray videlicet si extra domum comederit ei in die iij. solid. et unum simenellum sal. & unum sextar. vini expens. & unum cereolum & xxiiij frustra candel. si autem intra xiiij d. & dimid. sextar. vini expens. & candelam plenarie Item comperimus quod quatuor marescalli, qui serviunt familiæ regis quam clericis quam militibus quam etiam ministris die qua faciunt herbergeriam vel extra curiam morantur in negotio regis viii d. in die & unam gallonem vini expens. & xij frustra candel. si intra iij d. in die hominibus suis in die & candel. plenarie Quod si aliquis marescallorum missus fuerit in negotio regis viii d. tantum servientes marescallorum si fuerunt missi in negotio regis unusquisque iij d. in die sin autem in domo regis comedentur Alium inde non comperimus Breve quidem vestrum nobis super
p. emissis

premissis directum vobis mittimus presentibus interclusum
Valeat vestra dominatio reverenda per tempora diuturna.

Pro Thoma comite Norff. & Marescallo Angliæ de Officio Marescalli in manum Regis capt. eidem Comiti restituendo.

Rot. Claus. a°. XVII°. Edw. II. in dorso m. 31.

THOMAS comes Norffolciæ & marescallus Angliæ per petitionem suam domino nostro regi apud Nottingham in octabis Sancti Martini anno &c. xvii° porrectam supplicavit eidem domino nostro regi ut cum officium marescalciæ predictæ quod ad ipsum comit. & marescall. Angliæ pertinet habere virtute doni dicti domini regis sibi facti coram iusticiariis dicti domini regis ad placita sua coram ipso domino rege tenenda assign. captum fuisset in manum dicti domini regis placeret eidem domino regi officium illud dicto comiti restituere Et Henricus de Staunton & socij sui iusticiarij dicti domini regis ad dicta placita tenenda assignati tunc presentes coram ipso domino rege inde allocuti dixerunt quod cum nuper in comitatu Lancastr. fuissent placita predicta tenentes nullus fuit pro predicto comitatu officium predictum faciens propter quod hoc notificato dicto domino regi idem dominus rex quendam de suis assignavit ad dictum officium in defectu predicti comitis faciendum Et dictum fuit prefato comiti quod pro defectu illo finem faceret dicto domino regi si sibi videret expedire Et idem comes finem fecit cum dicto domino nostro rege per centum libras pro defectu supradicto Et idem dominus noster rex per finem illum restituit dicto comiti officium supradictum & de gratia sua speciali remisit & pardonavit prefato comiti dictas centum libras & oretenus injunxit predicto comiti quod ipse in officiis marescalli illius in curia dicti domini regis suo nomine tales deputaret qui sufficientes & idonei essent pro ipso domino nostro rege & populo suo & dictum comitem indempnem servarent & permuniarent eundem comitem quod si extunc per aliquem per ipsum comitem

comitem in officiis illis vel eorum aliquo deputand. ut dampna aliqua predicto domino regi evenirent quod idem dominus rex inde caperet ad comitem supradictum.

**De Extractis Finium coram Senescallo Regis
ad Scaccarium Regis mittendum.**

Rot. Pat. a. XVI^o. Edw. II. m. 2.

REX senescallo hospicii sui qui nunc est vel qui pro tempore erit salutem Quia volumus quod extractæ de finibus amerciamentis exitibus forisfacturis & omnibus aliis proficiis ad nos spectantibus de placitis & querelis coram vobis & marescallis dicti hospicii placitatis singulis annis ad duos terminos Videlicet ad festa Sancti Michaelis & paschæ ad Scaccarium nostrum plenarie liberentur vobis mandamus firmiter injungentes quod extractas rotulorum vestrorum de finibus amerciamentis exitibus forisfacturis & aliis proficiis ad nos spectantibus de placitis & querelis hujusmodi distincte & aperte factas singulis annis ex nunc ad terminos predictos ad dictum scaccarium liberari fac Et hoc nulla tenus omittatis Teste rege apud Eborum tercio die Julij.

Per ipsum Regem.

Feoda pertinentia ad Comitem Mariscallum.

Petitiones Parliament. apud Winton. a. 4^o Edw. III. inter
aila, N^o 81.

A NOSTRE signeur le roy d'Engleterre prie Thomas counte Norffolk & marshall d'Engleterre son uncle q'il luy pleise parmy son bon conseil de performer a lui les dix mill marches de terre queux le noble roy Edward son ael & pere an dist counte lui graunta &c.

Item prie le dist counte q'il pleise a nostre dist seigneur le roy commander qu'il pense estre servy de ses fers & des autres choses qui appendent a son office de la marechausie dedeinz l'ostell & dehors auxi avant come ses predecessours countes

countes mareschauls ount estre servy solone ces qui est contentuz en une bille des parcells a ceste peticioun annexe.

Soit mande as tresorer & chambreleins & auxy as gardeyn de la garderobe que il cherchent lour remembrances des fees que mareschaux ont receue einz ces heures & certifient le roy il adonque se aviserá.

Fait a remember des parces que le counte mareschal doit prendre en l'ostel nostre seigneur le roy c'est a savoir quand le counte est dedeins la verge & ne mangensse en la court ijs le jour & un symenel sale un fester de vin & un torche & xxiiij mennes chaundeles de ciere Et s'il mangensse en la court chescun jour xiiij. & demy fester de vin. Et chescun an a le pentecouste vij annes de scarlet un drap de colour de chevalers & deux forurs de ventre de conigus Et as quatre mareschalls qui servent a la mesure le roy auxi bien as chevelers come as clerks & auts ministres le jour q'il facent herbegage & hors de la court le roy mangenssent il prendront oent devers le jour un gealon de vyn & xij mennes chandeles & s'il mangenssent dedeinz la court, il aueront treis deners le jour & chandele pleueirement Et si nul mareschal soit maunde en les busoignes le roy il prendra le jour viii^d Et si nul des servants les dits mareschals soit mande en les busoignes le roy, il prendra le jour iij^d. des queles parces qui mort est comanda par ses lettres a son seneschal & tresorer de son hostel q'il feissent la liverie a dist counte par certificacion qui lui vint hors de son eschekiere des parces avant dites.

Item le dist counte deveroit prendre pour son fee al homage faire de chescune counte & excevesque xl. des evesques & barons qui tiennint par baronie c. marcs de chevelers v. marcs & des sergeants solone la purpartie de leur tenure.

Item le dist counte deveroit prendre chescun americament & fin dedeinz xl^d. endroit des hosteux dedeinz la verge la lyvere se deit faire par le counte mareschal ou son leutenant & par nul autre En dreit des attachmentz des gens del hostel le roy ou de Foreins il se devient faire par le counte mareschall & sez ministres & par nul autre & s'il soient agarde au prison la garde & ne mye aillours.

Item,

Item le dist counte deit avoir un de ses clerks come son lieutenant a faire les attachments & pur fournir les inwyfes as plees des marchez & un countre roulloux pur le profit nostre seigneur le roy.

Item en dreit des verges virolees nul homme ne les deit porter dedeinz la verge si nonn ceux qui sont atticle par le dist count.

De inquirendo de Officio Mareschalcie.

Rot. Fin. 20. XVIII. Edw. III. m. 22.

REX dilectis & fidelibus suis Roberto de Herle Thomæ de Sibethorpe Johanni de Huton & Richardo de Stoneley salutem Quia Willelmus de Monteacuto nuper comes Sarum qui officium marischalcie Angliæ tenuit ad terminum vite sue ex concessione nostra quam ei fecimus post mortem Thomæ nuper comitis Norfolk & mariscalli Angliæ qui officium illud tenuit sibi & heredibus masculis de corpore suo exeuntibus ex concessione domini Edwardi nuper regis Angliæ avi nostri ita quod si idem comes Norff. obieret sine hærede masculo de corpore suo exeunte predictum officium ad dictum avum nostrum & hæredes suos integre reverteretur diem clausit extremum Et quod post mortem prefati comitis Sarum eo quod predictus comes Norffolciæ sine hærede masculo de se obiit ad nos & heredes nostros reverti debet ut accepimus Assignavimus vos tres & duos vestrum ad officium predictæ marischalcie cum pertinentiis tam in curia marischalcie hospitii nostri & in banco nostro coram nobis ac in communi banco & in scaccario nostro quam in quibuscunque aliis placeis nostris ac locis infra regnum nostrum Angliæ ubicunque dictum officium exercetur in manum nostram capiend. & perscrutari faciend. in curia bancis scaccario regis placeis & locis predictis modis quibus expedire noveritis de avilamento presidentium placearum earundem quæ & cujusmodi officia in qualibet dictarum placearum & locorum spectant & pertinent ad officium supradictum & quæ & cujusmodi feoda & proficua sive terræ aut tenementa alibi infra dictum regnum nostrum qualiter

& quomodo & quantum valeant per annum in omnibus exhibitibus juxta verum valorem eorundem & de quo vel de quibus officium illud teneatur & per quod servitium & quem statum prefati comites in dicto officio habuerunt & utrum predictus comes Norffolk obiit sine herede masculo de corpore suo legitime procreato necne nec non de omnibus alijs circumstantiis idem officium contingentibus & ab eo dependentibus prout opus fuerit, plenius veritatem, & ideo Vobis mandamus quod inquisitiones hujusmodi super premissis & alia predicta in forma predicta facta & inquisitiones illas & ea quæ sic inveneritis Nobis sub sigillis vestris trium vel duorum vestrum & sigillis eorum per quos premissa facta fuerunt in cancellariam nostram sive dilatione mittatis & hoc breve Damus autem senescallo & mariscallo dicti Hospitalii nostri & Justiciariis nostris utrorumque bancorum predictorum & thesaurario & Baronibus de scaccario predicto & camerariis nostris nec non vicecomitibus & aliis ministris nostris per Angliam tam infra libertates quam extra tenore presentium in mandatis quod vobis tribus & duobus vestrum quatenus ad ipsos & eorum quemlibet pertinet in premissis pareant & intendant prout per vos tres vel duos vestrum super hac ex parte nostra fuerint premuniti & quod prefati vice comites, & alii ministri nostri extra placeas predictas venire fac. coram vobis tribus vel duobus vestrum infra ballivam suam tot & tales probos & legales homines de eadem balliva sua per quos rei veritas in premissis melius sciri poterit & inquiri In cujus &c. Teste rege apud Westminster. xxxi^o die Januarii anno regno sui xviii^o.

Memorandum, that the return of this commission hath bin carefully sought for, but cannot be found.

Secunda Pars Patentium

De a^o VI^o. Edw. II. m. 18.

REX omnibus Ballivis &c. ad quos &c. salutem. Recordum & processum coram senescallo & marscallo hospitalii nostri & dilecto & fideli nostro Johanne Wogan nuper habita

habita super deliberationem prisonæ marescalciæ nostræ de Johanne Reddings nuper capto & detento in prisona predicta pro contrafactione privati sigilli nostri & de Edmundo de Malolacu per ipsum Johannem de Reddings de dicta contrafactione ibidem accusato inspeximos in hæc verba Placita Aulæ domini regis de corona apud Westm. coram Hugone de Audele domini regis & marescallo ejusdem hospitii die Veneris in vigiliæ apostolorum Simonis & Judæ anno regni regis Edwardi Sexto Johannes de Redinges de hospitio domini regis per literas suas patentes de privato sigillo assignatas captus & in prisona marescalciæ domini regis detentus pro contrafactione privati sigilli domini regis & pro quibusdam literis de predicto sigillo contrafacto consignatis cum eo inventis venit & inde allocutus dicit quod sigillum domini regis nunquam contrafecit Dicit tamen quod Edmundus de Malolacu nuper senescallus hospitii predicti die Sabbati proxime post festum apostolorum Petri & Pauli anno regni regis Edwardi nunc quinto apud Abreberth in comitatu Lincoln. dictum sigillum sibi libera- vit in presentia domini regis & infra virgam &c. pro quo quidem sigillo quadringenta talenta aureæ eidem Edmundo ibidem tunc solvebat & cum quo predictas literas postea sigillavit requisitus etiam si quos denarios virtute aliquorum literarum de predicto sigillo contrafacto sigillatarum de aliquibus receperat dicit quod non præterquam viginti marcas quas recepit nomine regis de priore & conventu Mounteacuto per quandam literam de predicto sigillo contrafacto consignatam unde quandam indenturam receptionem illam continentem eidem priori & conventui de qua altera pars penes ipsum remansit Requisitus insuper quo dictum sigillum contrafactum devenit dicit quod illud clam abjecit quando arrestatus fuerat ita quod inveniri non potuit. Et quia dictus Ed- mundus attachiatus non existit præceptum fuit marescallo quod predictum Johannem remitteret usque in crastinum & quod attachiaret predictum Edmundum ita quod eum haberet coram eisdem senescallo & marescallo ad eundem diem ubicunque &c. super premissis responsurum Quo die dominus rex Johannem Wogan predictis senescallo & ma- rescallo

rescallo ad faciendam plenam & celerem deliberationem de predictis Johanne & Edmundo super premissis assignavit per literas suas patentes in hæc verba EDWARDUS Dei gratia rex Angliæ dominus Hiberniæ & dux Aquitaniæ dilecto & fideli suo Johanni Wogan salutem Sciatis quod cum Johannes de Redings captus & in prisione nostra marescalciæ pro contrafactiones privati sigilli nostri & pro quibusdam literis de predicto sigillo contrafacto consignatis est detentus ac idem Johannes coram senescallo & marescallo hospitii nostri in curia marescalciæ nostræ super hoc accusatus & allocutus asseruit se predictum sigillum ex liberatione Edmundi de Malolacu nuper senescalli nostri hospitii predicti recepisse & habuisse Nos volentes super premissis plenam & celerem justitiam fieri secundum consuetudinem marescalciæ predictæ Assignavimus vos una cum senescallo & marescallo hospitii nostri predicti ad deliberationem de ipsis Johanne de Redings & Edmundo de Malolacu & plenam & celerem justitiam in hæc parte faciend. secundum consuetudinem supradictum Et ideo vobis mandamus quod premissa una cum prefatis senescallo & marescallo sine dilatione faciatis & compleatis in forma predicta Mandavimus enim eisdem senescallo & marescallo quod ad premissa facienda una vobiscum intendant ut predictum est In cujus rei testimonium has literas nostras fieri fecimus patentes Teste meipso apud Westm. 27^o die Octobr. anno regni nostri sexto.

Et etiam idem dominus rex prefatis senescallo & marescallo aliud breve suum mandavit in hæc verba.

EDWARDUS Dei gratia rex Angliæ dominus Hiberniæ & dux Aquitaniæ dilectis & fidelibus suis senescallo & marescallo hospitii sui salutem Sciatis quod cum Johannes de Redings captus & in prisione nostra marescalciæ nostræ pro contrafactione privati sigilli nostri & de quibusdam literis de predicto falso sigillo contrafacto consignatis sit detentus ac idem Johannes coram vobis in curia marescalciæ nostræ predictæ super hoc accusatus & allocutus asseruit se sigillum predictum ex liberatione Edmundi de Malolacu nuper senescalli hospitii nostri predicti recepisse & habuisse Nos vo-

lentes

lentes super premissis plenam & celerem justitiam fieri secundum consuetudinem mareschalcie predictae Assignavimus dilectum & fidelem nostrum Johannem Wogan una vobiscum ad deliberationem de ipsis Johanne de Redinges & Edmundo & plenam & celerem justitiam inde faciend. secundum consuetudinem predictam Et ideo vobis mandamus quod una cum ipso Johanne Wogan sine dilatione ad hoc intendatis Teste meipso apud Westm. 27^o die Octob anno regni nostri sexto.

Prætextu quorum mandatorum predicti seneschallus & mareschallus una cum predicto Johanne Wogan ad deliberationem de ipsis Johanne de Redinges & Edmundo processerunt &c. Et predictus Johannes de Redinges venit & super predicta controfactione privati sigilli domini regis alias allocutus respondit sicut prius dicens quod Edmundus de Malolacu dictum sigillum cum quo ipse predictas literas sigillavit predicto die & anno & loco in presentia domini regis & infra virgam suam sibi liberavit pro quadringentis talentis auri ut predictum est Et desicut predictus Johannes de Redinges asseruit se predictum sigillum controfactum ex liberatione prefati Edmundi recipisse & habuisse & cum eo postea in absentia ejusdem Edmundi manu operasse questum est ab eo si quam falsitatem aut seductionem in liberatione aut receptione vel manu opere predicti sigilli scivit vel intellexit nec ne dicit quod non Rogatus qualiter se velit acquietare dicit quod per quicquid curia sibi consideraverit Et predictus Edmundus de Malolacu venit & defendit omnes seductiones & quicquid est contra pacem domini regis & coronam suam & bene defendit quod sigillum domini regis nunquam contrefecit nec aliquod sigillum prefato Johanni de Redinges liberavit nec ab eo quadringenta talenta auri recepit nec ad seductionem predictam assentiens nec consentiens extiterat sicut idem Johannes cum accusat & de hoc ponit se de bono & malo super patriam Et predictus Johannes de Redinges similiter &c. Ideo præceptum est mareschallo quod venire faciat incontinenter coram predictis seneschallo & mareschallo & Johanne de Wogan duodecim milites de hospitio domini regis gladio cinctos propinquiores visum de Alkeberwe

Alkeberwe qui ibi in præsentia domini regis tunc præsentēs fuerunt per quos rei veritas melius sciri poterit & inquiri & qui prædictum Johannem de Redinges accusatorem & præfatum Edmundum de Malolacu defendentem nulla affinitate attingant ad recog. qui tam &c. quam &c. Qui vero jurati viz. Willelmus Juchet Willelmus de Ferrers Gilbertus Pecche Willelmus de Cheyny Gerardus Salveyn Johannes de Crepinge Humphridus de Littlebury Johannes de Eure Willelmus Darcy Johannes de castro Henricus de Appelby & Robertus Darcy milites de consensu partium electi veniunt & super sacramentum suum dicunt quod prædictus Edmundus de premisis sibi impositis in nullo est culpabilis &c. Dicunt tamen quod præfatus Johannes de Redinges prædictum sigillum seduciose contrefecit & cum eo manuoperabatur ut prædictum est &c. Ideo consideratum est quod prædictus Edmundus eat inde quietus &c. Et quod prædictus Johannes de Redinges pro prædicta seducione sit detractus & pro manuopere cum sigillo prædicto poste suspensus &c.

Nos autem innocentiam ipsius Edmundi in hac parte attendentes nolamus quod idem Edmundus occasione contrefactionis prædictæ per nos vel justiciarios vicecomites seu alios ministros nostros quoscunque occasione tur molesteretur in aliquo seu gravetur In cujus &c. Teste rege apud Wyndesor octavo die Februarii.

In dorso Patentium

De anno XVIII^o Edw. II. p. ii. m. ii.

De inquirendo de malefactoribus in Fleetsfreete in suburbiis London. infra virgam regis & ubi H. P. per mareschallum regis hospitatus fuit.

Secunda pars Patentium

De anno X^o Edw. II. m. vi.

REX remisit Henrico G. & aliis hominibus de hundredo de Chatford in comitatu Essexiæ sectam, quam egra eos fecit occasione transgressionis & contemptus quos regi fecerint de hospitando et male tractando homines & equos regis qui in eodem comitatu per mareschallum hospitii regis hospitati fuerunt.

Secunda pars Patentium

De anno XVI^o Edw. II. m. ii.

REX voluit quod extractæ de finibus amerciamentis exitibus forisfacturis & omnibus aliis exitibus de placitis & querelis coram seneschallo & mareschallo hospitii regis placitatis singulis annis ad terminos sancti Michaelis & Paschæ ad Scaccarium suum plenarie liberentur.

Inter brevia regis.

In dorso claus. anno XVIII^o Edw. III. p. 1. ma.

EDWARDUS Dei gratia rex Angliæ & Franciæ & dominus Hiberniæ thesaurar. & baronibus suis de Scaccario salutem Volentes certis de causis certiorari tam de feodis quam de aliis quibuscunque quæ pertinent ad officium comitis marescalli & mariscalciæ Angliæ tam in Scaccario nostro et aliis placeis nostris & in hospitio nostro quam alibi in Angliæ sive extra tam guerræ tam pacis temporibus ac de terris & redditibus quæ similiter ad officium pertinent antedictum nec non de servitiis & aliis quæ marescalli huiusmodi nobis tenentur facere & progenitoribus nostris facere consueverunt & quæ nos & alii dicto mariscallo tenemur facere & debemus & dicti progenitores nostri ei hactenus facere solebant de jure vel consuetudine ratione officio memorati vobis mandamus quod scrutatis rotulis libris & memorandis

memorandis ejusdem Scaccarii & in eo residentibus quæ premissa contingunt nos de eo quod inde invenitis reddates sub sigillo dicti Scaccarii distincte & aperte citra diem Martis proxime futurum certiores hoc breve nobis remittentes Teste meipso apud Westm. xiii die Aprilis anno regni nostri Angliæ decimo octavo regni nostri Franciæ quinto.

Irrotulatur
termino
Paschæ An-
no XVIII.
Edw. III.
Ro. iii.

Certificatio super contentis in hoc mandato patet in quadam schedula consuta.

Scrutatis libris & memorandis Scaccarii super contentis in hoc mandato compertum est in quadam constitutione de domo regis antiquitus facta annotari sic.

Henricus de la Pomeray si extra domum comederit duos solidos in die & unum simenellum sal. & unum sextarium vini expens. & unum cereolum & viginti quatuor frustra candel. si autem intra quatuordecim denarios & dim. sextar. vini & candel. plenarie Magister mariscallus similiter & præter hæc debet habere dicas de donis & liberationibus quæ fuerint de thesauro regis & de sua camera & debet habere dicas contra omnes officiales regis ut testis per omnia Quatuor marescalli qui serviunt familiæ regis tam clericis quam militibus quam etiam ministris die qua faciunt herbergeriam vel extra curiam morantur in negotio regis octo denarios in die & unum gallon vini expens. & duodecim frustra candel. si intra tres denarios in die hominibus suis in die & candel. plenarie Quod si aliquis marescallorum missus fuit in negotio regis octo denarios tantum Servientes mariscallorum si missi in negotio fuerint regis unusquisque tres denarios in die. sin autem in domo regis comedentur.

Item in Rubro libro Scaccarii in quo annotatur qualiter officarii & ministeriales regis servierunt & quid ad eorum pertinuit officium die coronationis Alienoræ quondam reginæ Angliæ uxoris regis Henrici filii Johannis regis continetur sic.

De officio mariscalliæ servivit Gilbertus Mariscallus comes de Strigul cujus est officium tumultus sedare in domo regis liberationes in hospicio facere ostia aulae regis custodire Recipit autem de quolibet barone facto milite a rege & quolibet comite eo die palefridum cum sella.

Item marescallus in scaccario cujus ad curam inter alia pertinet tallas debitorum quas vicecomes reddideret & quæ annotantur in rotulo mittere seorsim in forulo suo & debitores non satisfaciētes de summonitione qui mesterint servare & soluto Scaccario die si voluerit in carcerem mittere custodiæ publicæ non tamen in vinculis Percipit ex antiqua consuetudine de singulis hujusmodi debitoribus dum in custodia sua fuerint quolibet die dimidiam marcam De hiis quæ pertinent ad officium marescalli aliud penes Scaccarium non comperimus.

Ex rotulo parlamenti

Apud Westm. in Octabis sancti Johannis Baptiste anno
XXX^o Edwardi primi Rot. 2. in dorso.

I*TEM* ad parliamentum predictum per ipsum dominum regem concessum fuit & præceptum quod illa concessio sua firmiter observaretur videlicet quod cum coram senescallo ipsius domini regis & marescallo &c. ipso domino rege apud London. seu Westm. aut alibi prope civitatem predictam existente inquisitiones aliquæ fieri debeant super transgressionibus aut aliis intra civitatem predictam factis inter aliquos de civitate predicta tantum aut inter ipsos & alios forinsecos conjunctim aut inter aliquem de hospitio domini regis & alium de civitate predicta seu alium forinsecum quemcunque & de quibus transgressionibus vel aliis ad eisdem senescallum & marescallos ratione virgæ cognitio pertineat quod omnes illæ inquisitiones infra civitatem predictam capiantur & non alibi quanquam partes inquisitionum illarum extra civitatem illam coram senescallo & marescallo placitaverint & se in inquisitionem patriæ posuerint dummodo aliqui juratores inquisitionis illius de civitate predicta fuerint & infra eandem commorantes.

Et hoc concessit dominus rex in favorem pauperum operatorum ejusdem civitatis qui de operibus manuum suarum vivunt ne victu suo carerent aut plus depauperarentur.

Reasons that the Court of Marshalsey may be fittly enabled in certain Cases to hold Plea of all Manner of Trespasses, as well upon the Case as others, albeit, neither Party be of the King's household.

I. **B**ECAUSE the jurisdiction at the common law was uncertaine, and the statute made to bring it into certaintie is as uncertaine; yet it seemes by good opinion in the law, and inferences upon divers statutes, viz. 28 Edward 1. articuli super chartas cap. 3. le preamble del statut de 3 Edward 1. cited in Coke lib. 6. fol. 20. 5 Edward 3 cap. 2. & 33 Henry 8. cap. 12. that this court may hold plea of all manner of trespasses, albeit neither party be of the king's house; howbeit this is controverted by great opinions in law, and become a case of great doubt and difficulty; for taking away of which doubt this graunt is prayed.

II. Because common usage, and the continuall practice of the court have been ever since the making of the statute unto this day, to hold plea of all manner of trespasses upon the case, and others between parties not of the household, and actions of debt as aforesayd, and this approved by infinite precedents most auncient.

III. Because it is as indifferent for the state, that this court should continue such usage and practice, as that every other inferiour liberty should; and all other libertyes doe; yea, this court is more necessary for the publick weale of this state than any inferiour court; for herein the resiants within the verge have a most speedy triall for their causes in foure court days, and speciall bayle in every small action, and with the small charge of forty shillings att the most, for the whole charge of tryall of a cause.

IV. Also

IV. Also by the king's royall prerogative for himselfe and the officers of his majesty's court, the officers of this court have power to enter all libertyes and priviledged places: and whereas in every liberty there is but one bayliffe who may be corrupted to favour bankrupts, and evill persons there lurking, the officers of this court still meete with them, to the great benefitt of many poore creditours, who otherwise would be defeated of their just debts and dammages.

V. Because to overthrow such auncient usage and practice is mischeivous to infinite subjects; for if all the judgements in the sayd court, in such cases and actions, where neither party hath bin of the king's household, should be reversed, the parties are infinite which have many yeares synce recovered their just dammages, and who should be thereupon enforced to restore backe the same, and now would be without all remedy to recover them againe by new suite, by reason of death of wittnesses or death of parties defendants with whom such personall actions dye.

VI. Because hereupon would ensue infinite suites against all the officers of the sayd court, as every man in such case might have an action upon the statute against the steward and marshall for every such action which they held to plea of, and also against the parties which brought suites there, which are infinite, and against every officer which arrested any upon such action, or served any execution in such cases; which also are infinite.

VII. Because hereupon must ensue the utter subversion of that auncient court, which is as auncient and of as high record as any court in this realme, and of those auncient and necessary offices of state ordeyned for the peace of the king's house, viz. the marshall of the king's house and steward of the marshalcy of the same; for those officers following the court to their great charge, the recompence of their service growing merely out of auncient fees due to them upon suites before them, and almost all those suites

between partyes not of the household, those suites abrogated, they must either have supply out of the king's coffers, or else will be enforced for want of supply of their charge in their places, to surrender their offices; for as yet they have never had any annuall pension or fee of the king in respect of their offices.

VIII. This case requireth speedy redress, the mischeife being now growne to soe great extremity, by reason that this auncient question of the jurisdiction of this court hath bin much more stirred of late then ever heretofore, for the writts of errour now brought and founded upon this doubt are exceeding many, twenty at least in a short tyme; the actions upon the statute and of false imprisonment against the plaintiffs suitours there, and the officers of that court, now depending full as many, and tend to the utter undoing of many of them: the lives of the inferiour officers are likewise every day in great hazard, by reason of rescues made upon them in the execution of their offices.

Rot. Claus. de anno XXIII^o Edw. III. p. 1. m. 5.

REX thesaurario & baronibus suis de Scaccario salutem
Cum in secundo statuto apud Westm. anno regni domini Edwardi quondam regis Angliæ avi nostri decimo tertio edito sic continetur De marescallo suo de feodo camerariis custodibus ostiorum in itinere justitiariorum & servientibus virgam portantibus coram justitiariis apud Westm. qui officium illud de feodo & qui plus exigunt ratione fidei suæ quam exigere consueverunt secundum quod multi queruntur per eos qui statum curiæ a multo tempore viderunt & sciunt dominus rex inquire fecit quem statum predicti ministri de feodo habere consueverunt temporibus retroactis & per inquisitionem illam statuit & præcepit quod marescallus de feodo de novo exigit Palefridum de comitibus & baronibus & aliis per partem baroniæ tenentibus quando homagium fecerint & nihilominus ad militiam eorum alium Palefridum & de quibusdam de quibus Palefridum habere non

non debuit Palefridum de novo exigit ordinavit quod predictus marescallus de quolibet comite & barone integram baroniam tenente de uno Palefrido sit contentus vel de precio quale antequitus percipere consuevit Item quod si ad homagium quod fecit Palefridum vel pretium in forma predicta ceperit ad militiam suam nihil capiat & si forte ad homagium nihil ceperit ad militiam de abbatibus & prioribus integram baroniam tenentibus cum homagium aut fidelitatem fecerint pro baroniis suis capiat Palefridum vel pretium ut predictum est Hoc idem de archiepiscopis & episcopis observandum est de hiis autem qui partem baroniæ tenent sive sint religiosi sive seculares capiat secundum portionem partis baroniæ quam tenent De religiosis tenentibus in liberam eleemosynam & non per baroniam vel partem baroniæ nihil de cetero exigit marescallus Et concessit dominus rex quod per hoc statutum non præcludatur marescallus suus de feodo in in plus petendo si impofterum ostendere poterit quod jus habeat plus petendi prout in statuto predicto plenius continetur Ac jam intellexerimus quod nonnulli tam episcopi abbates & priores quam comites barones & alii qui homagia & fidelitates nobis pro terris & tenementis quæ de nobis per baroniam & partem baroniæ tenent hujusmodi feoda marescallo non solverunt nec solvere intendunt quod si permittitur in nostri & coronæ nostræ præjudicium & exhæreditationem cedere dinoscitur manifeste Nos hujusmodi præjudicio & exhæreditationi in quantum poterimus præcavere & jura coronæ nostræ nostris temporibus manutenere volentes ut tenemus vos mandamus quod visis nominibus prælatorum comitum baronum militum religiosorum & aliorum qui nobis homagiæ & fidelitates pro terris & tenementis quæ de nobis tenent fecerunt in quadam schedula quam vobis mittimus sub pede sigilli nostri contentorum eosdem prælatos comites barones milites religiosos & alios quos per scrutinium rotulorum & memorandorum Scaccarii predicti aut alio modo legitimo vobis constare poterit de nobis per baroniam vel partem baroniæ tenere & feodum illud non solvisse quod ad nos eo quod feodum
illud

illud per mortem Thomæ nuper comitis Norffolciæ & marescalli Angliæ ad manus nostras devenit pertinet solvendum distringi & feodum illud ab iis ad opus nostrum levare faciatis prout de jure & secundum formam statuti predicti fuerit faciendum. Teste rege apud Woodstock xix^o die Maij.

Originale

De anno XXXIII^o Edw. IIIth Rot. 16.

REX dilecto sibi Henrico Traynell salutem Sciatis quod commissimus vobis officium clerici marescalciæ hospitii charissimi filii nostri Thomæ de Woodstocke custodis Angliæ in manu nostra per mortem Rogeri de Mortuomari nuper comitis March et marescalli Angliæ existent. infra procinctum duodecim leucarum in circuitu hospitii ejusdem custodis una cum senescallo hospitii predicti vel ejusdem senescalli locum tenente & aliis fidelibus nostris quos per litteras nostras patentes ad diversas felonias & transgressiones & alia malefacta infra procinctum predictum audiend. & terminand. assignavimus faciend. & exercend. In cujus rei testimonium &c. quamdiu bene placuerit duratur Teste custode predicto apud Westm. xx^o die Aprilis.

I B I D E M.

REX dilecto sibi Johanni de Lutterworth salutem. Scias quod commissimus tibi custodiam prisonæ marescalciæ hospitii charissimi filii Thomæ de Woodstock custodis Angliæ in manu nostra per mortem Rogeri de Mortuomari nuper comitis March.—& marescalli Angliæ existent. Ita quod securitatem coram senescallo hospitii predicti vel ejusdem senescalli locum tenente invenias de respondendo fideliter de omni eo quod ad custodiam predictam pertinet tibi & quando debeas ut est justum & fieri consuetum In cujus &c. quamdiu regi placuerit duratur Teste ut supra.

I B I D E M.

REX dilecto sibi Johanni de Knighton salutem Scias quod commissimus tibi officium servientis mariscalli in mariscalia hospitii charissimi filii nostri Thomæ de Woodstock custodis Angliæ in manu nostra per mortem Rogeri de Mortuomari nuper comitis March & marescalli Angliæ existent. infra procinctum duodecim leucarum in circuitu hospitii ejusdem custodis una cum senescallo hospitii predicti vel ejusdem senescalli locum tenente & aliis quos per literas nostras patentes ad diversas felonias & transgressionem & alia malefacta infra procinctum predictum audiend. & terminand. assignaverimus faciendum & exercendum In cujus &c. quamdiu regi placuerit duratur &c. Teste ut supra.

De querela inter Edward le Despencer & Radulphum Basset audiend. &c. sup. exacc. &c. prisonarij.

Rot. patent. anno XLVIII^o Edw. III. in dorso. p. 2. m. 20.

REX dilectis & fidelibus suis Guidoni de Brien & Richardo de Stafford salutem Sciatis quod cum officium constabularii Angliæ per mortem Humfridi de Bohun nuper comitis Herefordiæ & Essexiæ qui illud de nobis tenuit in capite & ratione minoris ætatis hæredum ipsius comitis ad manus nostras jam devenerit & Thomas Moore per petitionem suam nobis supplicaverit sibi justitiam super exactione sua cujusdam prisonarii contra ipsum predictum & fidelem nostrum Radulphum Basset ut dicitur injuste detenti exhibere Nos volentes in hac parte fieri quod est justum & de fidelitate vestra plenius confidentes committimus vobis & alteri vestrum vices hujusmodi constabularii ad querelam ipsius Thomæ in hac parte una cum dilecto & fidele nostro Edmundo de Mortuomari marescallo Angliæ vel ejus in hac parte deputat. audiend. & omnia alia quæ ad officium hujusmodi constabularii pertinent hac vice faciend. & explend. secundum legem & consuetudinem armorum

armorum & ideo vobis & alteri vestrum mandamus quod circa premissa una cum prefato marescallo vel ejus deputat. faciend. & explend. intendatis in forma predicta. Damus etiam ducibus comitibus vicecomitibus baronibus justiciariis majoribus ballivis ministris & omnibus aliis fidelibus nostras tam infra libertates quam extra tenore presentium in mandatis quod vobis & alteri vestrum in premissis faciend. & exequend. sicut predictum est intendentes consulentes respondentes & auxiliantes sint quociens & prout per vos fuerint super hoc prævenerint ex parte nostra In cujus &c. Teste rege apud Westm. x^o die Octobris.

Per consilium:

Pro Ivone Bestent.

Eodem anno in dorso.

REX dilectis & fidelibus suis Guidoni de Brien & Ricardo de Stafford. Sciatis quod cum officium constabularii Angliæ per mortem Humfridi de Bohun nuper comitis Hertfordiæ & Essexiæ qui illud de nobis tenuit in capite & ratione minoris ætatis hæredum ipsius comitis ad manus nostras jam devenerit & jam Ivo Bestent de Britannia armiger per petitionem suam nobis supplicaverit sibi justitiam exhiberi super exactione sua cujusdam Henrici de la Hay chevalier prisonarii ipsius Ivonis ut dicitur Nos supplicatione predictæ quatenus justum fueret annuentes & de fidelitate vestra plenius confidentes committimus vobis & alteri vestrum vices hujusmodi constabularii ad querelam ipsius Ivonis in hac parte una cum dilecto & fidei nostro Edmundo de Mortuomari comite March & marescallo Angliæ vel ejus in hac parte deput. audiend. & omnia alia quæ ad officium hujusmodi constabularii pertinent hac vice faciend. & explend. secundum legem & consuetudinem armorum Et ideo vobis & alteri vestrum mandamus quod circa premissa una cum prefato marescallo vel ejus deputat. faciend. & explend. intendatis in forma predicta. Damus autem ducibus comitibus baronibus justitiariis vicecomitibus majoribus ballivis ministris

ministris & omnibus aliis fidelibus nostris tam infra libertates quam extra tenore presentium in mandatis quod vobis & alteri vestrorum in premissis faciend. & exequend. sicut predictum est intendentes sint consulentes respondentes & auxiliantes quociens & prout per vos vel alterum vestrorum fuerint super hoc præviniti ex parte nostra in cujus, &c. Teste rege apud Westm. xxviii^o die Octobris.

Per ipsum regem & consilium.

OFFICIUM mareschallæ Angliæ cum pertinentibus concessit Willielmo de Monteacuto comiti Herfordiæ a tempore mortis Thomæ nuper comitis Nortfolciæ & mariscalli Angliæ avunculi regis ad totam vitam ipsius comitis Herfordiæ 3 ps. pat. anno 12^o Edw. 3. m. 7 & 1^a ps. pat. anno 18^o Edw. 3. m. 18.

Thomas de Bellocampo comes Warwic. constituitur mariscallus Angliæ quamdiu &c.

De Feodis pro officio mariscalli Angliæ in Hybernia colligendis 1^a ps pat. anno 27^o Edw. 3. ma. 13^a.

Thomas de Bello Campo comes Warwic. habet officium mariscalli Angliæ quamdiu &c. 2^a ps. pat. anno 40 Edw. 3. ma. 16

John de Arundell mariscallus Angliæ 2^a ps. pat. anno 2^o Rich. 2. ma. 40^a & 1^a ps. pat. anno 3 ma. 7^a.

Radulphus Nevill habet officium mariscalli Angliæ ad vitam 1^a ps. pat. anno 1^o Hen. 4. m. 15 & 32. & vide annum 6 pt. 1. m. 30.

Johannes comes Huntington durante minore ætate Johannis filii & hæredis Johannis ducis Norfolk 1 ps. pat. anno 1^a Hen. 6. m. 20.

De Mariscallo Angl. constitut.

Pat. anno 3^o Rich. 2. ps. 3. m. 18.

REX omnibus ad quos &c salutem Sciatis quod constituimus carissimum fratrem nostrum Thomam de Holland mariscallum nostrum Angliæ capiend. in eodem officio feoda & proficua ad idem officium spectantia volentes quod

ipse officium illud & quicquid ad illud pertinet per se & suos deputatos idoneos debite gubernare & exercere possit quamdiu in officio steterit supradicto in cujus &c. Teste rege apud Westm. xiiij^o die Marcii.

Per breve de privato sigillo.

Pat. anno 4^o Rich. 2. p. 1. m. 3.

REX omnibus ad quos &c salutem Inspecimus literas patentes quas charissimus frater noster Thomas de Holland mariscallus Angliæ fecit dilecto nobis Johanni Draiton armigero suo in hæc verba. " Sachent tous que cestes lettres verront ou orront nous Thomas de Holland marshall d'Angleterre avoir done & graunte a nostre chevalier & byen amies esquier Johan Draiton les offices de serjeant marshall and clerke marshall en la marshallsey del ostel nostre suvereigne le roy ensemblement ou touz maneres fees meinprises & profits touchants les ditz offices donans & grantans au dit Johan Plein poiar a faire acquitances a tous iceux as queux acquitance appartient touchants les dits offices & de remure tous les officers touchant mesne l'office a sa volonte & mettre autres in leur lieus eyants ferme & establie quant que le dit Johan fera en les dits offices a avoir & tenir les dits offices au dit Johan pur le temps que nous serons mareschall d'Angleterre En testimoniance de quelle chose a ycestes nos lettres patentes avons fait mettre nostre seale don a Kenington le vint teirce de Feverer l'an du reigne noster signor le roy Richard secunde puis le conquest tierce." Nos autem dictas donacionem & concessionem predicti fratris nostri ratas habentes & gratas eas pro nobis & hæredibus nostris quantum in nobis est approbamus ratificamus & tenore presentium confirmamus prout literæ predictæ plenius testantur volentes insuper & concedentes quantum in nobis est prefato Johanni quod ipse predicta officia cum omnibus feodis & proficiis eisdem officiis pertinentibus habeat & teneat ad totam vitam suam in cujus &c. Teste rege apud Northampton quinto die Decembris.

Per breve de privato sigillo.

N^o XXVI.

Nº XXVL

Of the Antiquity of the Christian Religion
in this Island.

By Sir ROBERT COTTON.

Nov. 29th 1604.

CONSENT of all authors and pregnant circumstances manifest, that Austyn the monk had not a general conversion as the end of his employment, but the general reformation of the whole church government; and therefore is he in the instruments of his particular service stiled, *doctar Anglorum*, and sometimes, *apostolus Anglicæ gentis*, as appeareth by Malmbury, in regard that to the Saxons or Angles only he was sent convertor: but in his bulls of jurisdiction, his general end, he is usually called *Primus Britanniarum*, in that he was appointed, and had the entire order given to him for the whole. For Christianity, although blemished by the Saxon's barbarisme, which this apostell cleered, or by the Pelagian heresie, the seed of our countryman *Pelagius* or *Morgan*, for so the word importeth, for remove whereof the reverend fathers *Germanus* and *Severus* were called hether from France by our British churches, did notwithstanding in succession continue, and ascend unto the times next to Christ's passion, the which after I have layed downe the state of this church, as here found and established by this monk, I will raise upp as the proper being of this question. Beda noteth, that in the synod held at Austyn's oake, there were seven old British bishops called to consultation, who in poynts of substance did not vary from the church of Rome, but in ceremony, followed that of the Greekes; from whence our conjectures may lead as to the first planting of Christianity here, for after their forme and times did we celebrate the feast of Easter; and in memory of the mother churches of Asia, which

were seven, as Bernardus Clarivalentius saith, the monastery of Bangor did distribute their monks into seven portions, everie one numbering 300 soules. And pope Gregory in his decretalls ordeineth *contra episcopos Scotorum vel Brittannorum*, the use of chrisme and eucharist, *ante confessi fuerint, se nobiscum esse in unitate ecclesie*. Whereby we may collect that not so much in ground, as faschion was their descent; in which last, at the first he was not so strickt, for to the question of this saint Austyn touching the ceremony service, he answered, *Novit fraternitas tua Romanae ecclesie consuetudinem, sed mihi placet, sive in Romana, sive in Galliarum, sive in qualibet alia ecclesia aliquid invenisti, quod plus Omnipotenti Deo possit placere, sollicito eligas, et Anglorum ecclesie infundas*: thus farr of the religion here by him found. The next is the jurisdiction by him and his followers established and practised, their commission extending over the whole, as entire, as it is now one body, of which I will under favor speake a little, in proofe that the Scottish nations are under the sea of Canterbury: to confirme this, there is no stronger argument then can be drawn from the first institution and continued practice, which is evident in the first letter of pope Gregory, in which, after the subordinate jurisdiction of the churches of London and Yorke limited, he saith to Austyn the archbishop, *Tua vero fraternitas non solum eos episcopos quos ordinaverit*, meaning the bishop of London, &c. *neque hos tantummodo qui per Eboraci episcopum ordinati sunt sed etiam omnes Britannia sacerdotes*. And in the answer to the question tendered by the same monke, he saith, in *Galliarum episcopis nullam tibi auctoritatem tribuimus. Britanniarum vero omnes episcopos tulae fraternitati comittimus, ut indocti doceantur, infirmi roborentur, perversi corrigantur*, using *Britanniarum* in the plurall number, that it might include Scotland, and all the Western Isles, to which by ancient and best authors that name was common. This Beda in his third book expounded thus; *Omnes nationes provincias Britannia qua in quattuor linguis Brittonum, Pictorum, Scotorum, & Anglorum divise sunt, in ditionem* Oswaldus

Oswaldus accepit; and the same author speaking of Laurence his successor of Austyn sayth, *Non solum novæ, quæ de Anglis collecta erat ecclesiæ, curam gerebat, sed & veterum Britannie incolarum, nec non & Sæctorum, qui Hibernianâ insula Britannia proximâ populis pastorem impendere sollicitudinem curabat.* And to Theodorus that ruled that see in the year 688, the letter of jurisdiction from Vitellianus is, *omnes ecclesiæ ræ sanctitati in insula Britannia puestas commendavi.* And thus it continued untill the time of Lanfranc since the conquest, as appeareth by his letter to pope Alexander: and in regard of such intire rule due to that see was his successor Anselme placed in the councill of Clarimont *tanquam alterius orbis pontifex Maximus*, aluding to the phrase of the poet, wherein this whole Ile is called *alter orbis*. Thus far for the state and descent of religion from the time of the first establishment of the see of Canterbury which I make my first branch, whereupon I will raise by degrees the state of our Christianity to its infancy.

That we had a profession of Christ, at and before the landing of our last restorer Austyn, the seven bishops here found, the church erected in honor of saint Martyn, in the ages long forgone, where he first christened, and the godly monastery of Bangor, the mother of all others in the world, as Clarivalentinus saith, may assure such unincorrupted ascent. Near those times preceded Arthur, one of the nine, but first of christian worthies, whose ensigne was the signe of the virgin mother, as Vincentius noteth in his *speculo historiarum*, which so often successfully he advanced for Christ and his country's liberty against the pagan Saxons who had so much defaced both. The calamity of the church about those times, Gildas doth so passionately bewaile, that succeeding times have adapted to him the epitaph of Gildas Querulus. About the year 470 was a provinciall councill held for the reforming of religion, and repaying of the decayed churches which the Pagan marriage of Vortigern had caused, to the great mislike of the people, a pregnant signe of the continuing zeale, which

which unto those days had left a glorious memory: In the year 450. was Fastidius a Brittain bishop renowned for his booke *de vita Christiana & de viduitate seruanda*, full, as Gernadius saith, *sana doctrina*. At the councill of Ariminum, a little afore, we had three bishops, as Sulpitius Servius testifieth: Restitutus a bishop of London did subscribe the councill of Arles anno 335. At the councilles of Sardis and Nice in the time of great Constantin the first christian emperor, and this countryman, whose blessed days gave free way, first to that profession, to the councilles authority, to the pope dignity, and to the whole world peace, had we our bishops present, whose forwardness against the Arrians heresies Athanasius advanceth in his apology *contra Arrianos*, and Hillarius *in epistola ad epistolas*. The next step of our testimony falleth in the last persecution by Dioclesian, when Albon was made our protomartyr; a strong argument of free profession, since from our first conversion no blood was ever drawn of any christian here: from hence by the injury of time and tyrants we must make a wider step from Dioclesian to Severus, of whose times Tertulian writting saith, that *Britannia inaccessa Romanis loca, Christo vero subdita*, whereby he must intend Scotland beyond the walls, whereto the Romans had sett their limits. Then passing over the doubtfull relation of our saint Ursula, her 1100. Virgins, and saint Emerita sister to our Lucius, we come to him who lived under the emperor Commodus, and the first king of all Europe christened, of whose colledge of divine philosophy erected at Bangor, the monke of Clariwall saith *a fide Christi nunquam recesserunt*. Against this christian king some have opposed arguments, partly from defect of authority, some from circumstance, grounding the last uppon conjecture, that the emperors reducing the provinces did roote out allways the native souveraines: to this may be answered, that after this time, Xaphilia the contractor of Dion the Roman historian, noteth Attaxoxas a king in this island, with whom Julia Donna, Severus's wife, had conference, as Tacitus, of this country saith, that the Romans did still continue king's

instru-

instrumenta servitutis. For antiquity there can be no better than that of Beda, Anastacius Bibliothecarius, and the old original martirology, a monument of a thousand yeares. Next we must passe to Claudia Ruffina whom saint Paul commended, and Martiall the epigrammist praiseth for her witt and beauty: to which in part, the author of the three conversions seemeth to oppose as an impossibility, not well advising, that from the last of Nero, when Sylvanus and Otho were consuls, and in which yeare saint Paul was crucified, unto the raigne of Domitian, wherein the poet lived, will hardly reach twenty-four yeares, which time without much doubt she might survive. The next in order will be Aristobulus under the emperor Claudius, one of the 70 deacons mentioned in the epistle to the Romans, and by Dorotheus an author living under great Constantin, placed *episcopus Britanniarum*. That Simon the apostle was here a bishop, Metaphrastis is the auctor; as Sophronius of saint Paul's preaching here and in France: and that Joseph, who gave to Christ a buriall, after his successfull preaching here, found at Glassenbury his owne sepulcher, is well avouched by Malmsbury in his antiquities *Glasconiensis cenobii*, as also by Baronius in his laborious worke of the church story. Lastly the most skillfull druides, peculiarly ours, whose doctrine of the soules immortalitie as all auctors confesse, and of a Virgin's conception, prophesying, as Portellus doth out of some auctors enforce; ripned, as Origin sayth, Britannia the first fruite of God's harvest; which hath been a soyle so gratefull since, that Polydor Virgill a stranger maketh it *parens & altrix omnium totius Europæ monasteriorum*. Merr in his annals of Flanders confesseth, *Nulla ex gente plures divos divasque quam ex Anglia incolæ erga sanctos indigentes maxime liberales*, as saith the chronicle *Warsonensis cenobij*. Our blood roiall exceeding all other countrys in martyrs and confessors. And *nusquam gentium tot sanctorum illibata corpora, quot in Anglia*; Vincentius remembreth in his 25th book. The Nederlanders were from hence converted, as testifieth the story of Swithbertus, Burgundy by our Columbanus, as Sigisbert,

bert, Scotland by Brandanus, as Bernard the French monk, Suedia by Gallus, as Petrus de Xutalibus, and Frisia by Wulfred, as is recorded by Matthew the monk of Westminster. Thus farr of our christianity, continuance, and antiquity.

N^o XXVII.

Of the same.

By Mr. AGARDE.

Nov. 29, 1604.

ALTHOUGH this proposition of it selfe be more proper to be dilated by dyvines than by any other, yet because I would bring some thynge to the encrease of our buildinge, I hope that it shal be taken in good parte whatsoever I shall produce out of auneyent manuscript Englishe authours, they beinge the bookes wherein I have for many late yeares togeather trayvelled for many speciall matters, whereby I might in my place be the more ready to satisfy the desires of such as delited in antiquities. Soe keepinge my self within the lystes of the articles agreed on at our first assemblies, whereof this was one [that as neere as might be, thee mooste proufes of our questions should be produced from our home writers, evidences, lawes, and deedes, and not from forreyners and straungers ignorant of the state and government of our country] of such thinges as I have collected before the time Mr. Savell published our Englishe histriographers, out of many of which, and others, beinge then auneyent manuscripts, I selected some such remembraunces as I thought fytt for mine instruction, I will nowe, *nudo rudi & agresti stilo*, proceed to the matter. Mr. Robert Hare, that worthy antiquary, lent mee a large booke of St. Augustines of Canterbury, wherein was a full story of our island wrote about, H. the 5. his time, *anno domini*

1406, where he saith that that which he writeth, he collected out of Bede, Cestrensis, Sprot, & ex aliis scriptoribus illius monasterii. These are his Wordes in his 13th leaf: *Lucius primus rex Christianus regni istius sub anno domini 167, qui fuit annus 438 ante adventum Augustini. Qui Lucius divisit regnum in tres archiepiscopatus, scilicet London, Ebor. & civitat. legionum id est Westcestre.* To this agreeth a booke very auncient, which I have here to shewe of the antiquity of the archbushops of Yorke, with a catalogue of their names made in verse, his wordes are these: *Ritus phanaticus perduravit in Eborac. per 1200 annos, id est ad annos 262 post Incarnationem Domini nostri Jesu Christi usque ad tempus Lucii Britonum regis illustris.* And then he proceedeth to shew howe Lucius sent to Eleutherius the pope to have some from him to instruct him and his people, which Eleutherius accordingly sent two doctors Faganus and Damianus, by whom idolatrye was put downe, and in the place of flammins and archflammins appointed bushops and archbushops at the places aforementioned, making Faganus archebushope of Yorke, where the Christian Religion continued untill th' extirpinge of Britains out of the north by the Angles and Saxons, who were then noe Christians but Pagans, which was a clii. years after Lucius time. To this agreeth the register I have of Elye. Mark, those auctors affirme, that Lucius was the first kinge that openlye professed the Christian Religion here; yet I have read in an old register of Glastonbury of the beginnunge, progresse, and encrease of that house, where yt is mentioned that Joseph of Arymathea came many yeares before, ymmediately after the death of Christ, into this iland, and first preached Christ at and aboute Glastonbury neere to Welles. To this agreeth the testimony of Pollidore Virgill (who perused the most of oure antiquities of England, dwellinge amongst us) his wordes are these: *Hæc omnino christiane pietatis in Britannia extitere primordia quam deinde Lucius rex accendit & adauxit, &c.* Yea, and I have read, that Patrick the canonized Saynt of Ireland did long before Lucius's time preache the Gospel in Wales, and many other places, and

converted much people. Soe as the Christian Religion was professed by sundry of the nation privately, althoughe yt was not allowed openly by the princes and governours of the laud. For wee read, that shortlye after Lucius, in Dioclesian's time (in time of the Romane's government) at the place called Holmehurste, which is nowe called St. Albons, was Albon the martyr executed for the testimonye of Christ. And the persecution was so great as noe man durst be acknowledged to be a Christian. And as I have before said, that after the comminge of the Angles and Saxons into this realme (they beinge of a phanatycall idolatrous religion, and havinge driven the naturall borne Britains into Walles), Christian Religion was utterly extinguished (except only amonge the small remeyne of the Britains) until about the yeere of our Lord 482, at which time Augustine came from Rome and preached the Gospel to Ethelbert kinge of Kent, whome he converted. Afterwardes religion being by his means planted at Canterbury, was propagated into the farther partes of this realme. For as my note out of the Canterbury manuscript sayeth in the xvijth leafe, Edwin kinge of Yorke and of Northumberland sent to Edbald sonne of Ethelbert desiring to have his sister in marriage: to whome was answere made: *Non esse licitum pagana dari in conjugium virginem Christianam, ne fides & sacramentum celestis regis, consortia prophanarentur regis qui veri Dei cultu esset prorsus ignarus, &c.* Uppon which answeare Edwyn, for the desire he had to joyne in marriage, did entreate to have sent to him some that might instructe him in the Christian Religion: and thereuppon one Paulinus was sent, who treatinge and conferringe with his cheife archflamin Cophy (named by my Canterbury manuscript, and by my Yorke Cophy Cœsdi) by goodly reasones reclaimed him from his errors, and soe wrought with Cophy that for the better perswadinge of Edwyn, he desired that the same bishop should shew plainly how vain the idolles of the Gentiles whome he served were. Therefore the bishop, upon a solempne day in the presence of the kinge, got on a horse armed, and with a launce in his hand ran full course at the

the cheife idol, and so brake both the idoll and his staffe in peeces, declaringe that hyt was but the work of mane's handes. Whereuppon the kinge was converted and married, and appoynted Paulinus to be archbushope at Yorke, as in these wordes and verses is breifely set downe in my York book.

*Summus & ille Cophy prothoflumen tunc Eboraci
Credidit. armatus conterit ipse phana.
Regis ad exemplum ruptis aris idolorum,
Innumerus populus confluit ad lavacrum, &c.*

And my Notes of Canterbury say that this was done at a place neere on the east of Yorke at a place called Godmundingaham, *ultra amnem Dorwantianem*, and that the king thereupon caused all the idolles temples to be burnte and rased. Sythence which time the gospel did encrease, and hath continued in this island throughout from the north, and returninge to the east thereof. Whereuppon sundry greate abbyes were erected, as schole-houses for dyvines, yea and for lawyers allsoe, as I have heretofore prooved by fundry our ancient registers; as Peterborough founded by king Penda 58 years after Augustines comminge into the realme, and Ely at the same time, &c. For the better propagating of the gospel there were held sondry synodes or assemblies of the bushoppes for the discipline of the church, of which I have thought good to mention one which was had in *anno Domini 673, quo anno Egbertus rex-obit & Lotharius frater ejus successit.*

Articuli decem concordati per Theodorum & alios episcopos hujus regni, &c. Among which I will recyte some.

Nullus episcoporum parochiam alterius invadat.

Nullus clericorum relinquens proprium episcopum discurrat passim absque commendativis Literis.

Nullus episcoporum se preferrat alteri per ambitionem, set omnes cognoscant tempus & ordinem consecrationis.

Nulli liceat nisi legitimum connubium habere.

Nullus incestum faciat.

Nullus conjugem propriam deferat fornicationis gratia, quodsi deferat, si Christianus esse velit, nulli copuletur, set ita maneat aut proprie copuletur.

But helas ! as religion encreased, soe with the quietnes of peace, it growed into contempt, insomuch, that most lamentably Gildas, some 200 yeares after cryed out both against prince and people *ore prophetico*, denouncynge Godes judgements for the wickednes of the land, which shortely after ensued, as appeareth in history. By those examples, I pray God, wee may reforme oureselves, and say with the Prophet David, *Letabitur justus, cum viderit ultionem: pedes ejus in sanguine impij lavabit. Et dicit homo certe justum manet suus fructus, certe est Deus judicans in terra.*

Nº XXVIII.

Of the same.

By Sir WILLIAM DETHICK, garter principall kinge of armes.

29 November 1604.

FOR the Christian Religion in England. It seemeth that after the first invasion made by the Romanes into this isle by Julius Cæsar, the passages and intercourse for their armies and colonies were made open, as the histories doe agree; and it is probablye affirmed that Joseph of Arymathea after the passion, deathe, and resurrection of our Saviour Christ, anno 53 dide come into these partes, where he did playnely publishe and divinely declare the truth of the Christian Religion unto muche people, who were moved to the admiration of trewe beleffe of salvation, when resurrection after deathe was preched unto them in the primative purenesse of religion, then voyde of idolatrie and Pagan superstition. All which lasted not long tyme, but perished by the fearfull persecution under Dioclesian the
emperour

emperour as appeareth. And the same was hardly agayne beleved or knowen untill the tyme of Lucius, the sonne of Coill, the sonn of Maryus the Romaine that maryed one of the Daughters of the Brytaynes. For Tacitus in the lyffe of Agricola maketh no mention thereof, but of the generall superstitions and idoles of the Bryttaynes and their Druydes.

What is reported by Mr. Jewell bushop of Sarum, of that tyme of Lucius, when Eleutherius then bushop of Rome sent his letters unto Lucius, appeareth the very effectuall: signifeing that he sent him bothe the Ould and Newe Testaments, and how for that kingdom the king was God's vicar.

Since which tyme how often, how variable, and many wayes this religion hath been chainged and transformed, &c. I leave to the discourse of the writers of Chronicles and others.

N^o XXIX.

Of the same.

By Mr. WILLIAM CAMDEN.

FOR the profession of Christian Religion in this ylle, I knowe no place of higher antiquitie or better credite than that of our Gildas, who saith, that immediately after the passion *glaciali frigore rigente, insula & velut longiore terrarum secessu soli visibili non proxima verus ille sol radios suos primum indulsit.* By whose meanes or ministry in particular this was begonne, it will not be easely discovered, for even as kingdomes, states, and cities, so religion beganne in them by little and little; yf the credite of Dorotheus bishoppe of Tyre do waie any thing, the Christian Religion was planted here by Symon Zelotes, who, as he saith, was martyred and buried in Bretania; and Aristobulus mentioned by St. Paule in the Epistle to the Romanes, was bishop of Bretania;

Bretania; but I feare some Critickes will saye, it was not oure Bretania, but Bretiana, a parte of Italy now in the kingdome of Naples; for we see both in the eclogues of Polybius, and in the 42 booke of Dion, where they spake of that countrie, it is corruptly in the Greek bookes Bretania. The receaved opinion is, that Joseph of Arimathea was the first planter of Christianitie in this isle: but uppon whose authoritie this common opinion is grounded I cannot as yet finde. The most auncient that I know of this opinion is William of Malmesburie in his booke of the antiquitie of Glastenburie, Henry de Bloys, Abbot of Glastenburie and brother to king Stephen, who hath these words: *S. Philippus Francorum apostolus misit duodecim ex discipulis suis ad evangelizandum verbum Vitæ in Britanniam: quibus ut ferunt, charissimum amicum suum Joseph qui dominum sepelivit, præfecit. Venientes igitur in Britannia anno ab Incarnatione Domini lviii. fidem Christi prædicabant.* An old manuscript which Baronius saw in the Vatican Librarie reporteth the matter otherwise, videlicet, That Lazarus, Marie Magdalen, and Martha being banished from Jerusalem and thrust into a ship, without tackling, arrived in Gallia, and with them Joseph of Arimathea, whome saith he (*ut tradunt*) sailed hither. These two relations thus differing, and therefore of lesse credite, were drawne I cannot tell whence, unlesse from these words of Freculphus who lived about 700 yeares after Christ: *Philippus Gallis prædicat Christum. Barbaras gentes vicinasque, tenebris & tumentis oceano conjunctas, ad Scientiæ lucem fideique portum deducit.* It may be thought that William of Malmesburie understoode Britaine by *Barbaras gentes vicinasque tenebris & tumentis oceano conjunctas.* Albeyt some will thinke, that this was too shorte a tyme to propagate religion into a place so farr remote from Jerusalem. And whereas the persecutions do seeme, in the judgement of many learned men, to have beene the first and most principall occasions of spreadinge the gospell into places farr distant, and therby they do gather, as places fardest of last suffered persecution so they also later receaved the faith; I could therefore rather incline to think that Christianitie came somewhat

somewhat later hither, as to a place farthest removed, and which only smarted under the last persecution: and that about the time of Commodus, when Eleutherius sat at Rome. For the Romane martyrologe, which no doubt is of ancient and good credite, testifieth that Eleutherius sent some hither to teach the Christian Religion at the request of king Lucius, and the epistle is yet extant, being of more credite, for that it is dated, *L. Aurelio Commodo iterum & Vespronio consulibus*; whereas that kinde of date was unknowne to the counterfetting and unlearned monkes of latter times. Whereas some do call this in question, as though there were noe king in Britaine at that tyme, being then a province of the Romaines, and so would overthrow the credite of this matter, I would onely have them to recall to memorie; first, that the Romaines a long time maintained kinges in their provinces, *ut instrumenta servitutis*, as Tacitus saith, to serve their owne turnes; secondly, that the Britaines at that time utterly refused to be subject to Commodus; thirdly, that the northern parts of the isle had still their kinges, and were never fully reduced under the Romaines; lastly, that Capitolinus affirmeth expressly, that a little before this *Antoninus Pius confecto Bello, regna regibus, provincias comitibus suis regendas permisisse*; and to this tyme maye be referred that which Tertullian in generall saith in his apologettick, of the christians, *externi sumus & vestra omnia implevimus, urbes, insulas, castella, municipia, &c.* and in particular of Britaine, *Britannorum inaccessa Romanis loca, Christo sunt subdita*, as for that which Venantius, Fortunatus, Sophronius, Theodoret, Nicephorus, and Simeon Metaphrastes doe write of St. Peter's and St. Paule's comming hither; I know it will carrie the lesse credite with some men, who hold for a ground, that in historical matters, *Qui tempore & loco proprios, fide patiores habeantur.*

N^o XXX.

Of the same.

By W. HAKEWILL.

29 November 1604.

WHEN and by whome the first seedes of the Christian fayth weare sowed in this island is no lesse doubtfull and uncertayne, then it is cleere and without question, that within the space of a verie fewe yeeres after the Passion of our Saviour those glad tydings of salvation weare brought hether. And although by means of the great calamities and troubles which this lande was subject unto in those dayes, the distinct and cleere testimonies hereof have either been lost, or weare never at all committed to writing, yet are there many arguments and reasons which do prove, that even the warres themselves, and the bondage which our anncestors then endured under the Romanes, was by the mercy of God ordayned to bee a meanes of their first knowledge of Christ Jesus. In that respect, as it is well said of a learned author of theis tyme speakinge hereof, *Hoc Romanorum jugum quamvis grave, tamen salutare fuit.* For the faythe of Christ havinge beene preached in the world some dozen yeeres or more with admirable successe, and that in Rome itselke by some of the apostles before the comminge over of the emperor Claudius in person into this island, to omit the probabilitie that in the great trayne which followed him hither, there weare some christians amongst the rest which came hether with him, and to consider onely the great commerce and intercourse between Rome and Britaigne in those days; the great number of Britaignes hostages, captives, and others then in Rome, and the outrageous persecutions there, which drove thence the christians to places of more safety and libertie; it is verie likely that some Britaignes, beinge converted to the Christian fayth, returned home, and som Romans, and others, beinge persecuted

secuted, fledd hether, as to a place where they might of any other in the world most freely enjoye their consciences. To this may be added the testimonies of divers annient writers, as Sophronius, Theodoret, Tertullian, Nicephorus, and Gildas who affirmeth that the light of the gospell shyned to this island in the dayes of Tiberius, which must be within five yeeres after Christ. All agreeing in generall termes that this island, though the most westerne then known in all the world, had the early and morning sunshyne of the gospell before many other not so remote. But when wee endeavor to name and assigne out the persons who had the honor of this highe office heere, we wander in many doubtes, and have just cause to complaine of the unhappinesse of those dayes, which left us no more knowledge of that poynt which was so worthie of our perpetuall memorie. By means hereof the opinions of authors are herein very divers and variable, insomuch as emongst them, I fynde six severall persons names to whome they have attributed this honor; that is to say, to three of the apostles themselves, St. Peter, St. Paule, and Simon Zelotes; to two apostolical men, Aristobulus, whome St. Paule nameth in his epistle to the Romans, and Joseph of Arimathea that buried Christ, as also to Claudia Ruffina a British Lady, living then in Rome, and beinge the wyfe of Prudens a Roman senator, and the mother of the two famous virgins Praxedes and Pudentiana, who also received and lodged in her house both St. Paule and St. Peter, and whom St. Paul saluteth in his epistle to Timothy. The three foresayd apostles and Aristobulus are by som auncient authors reported to have been heere in person; but the authoritie itselfe is so weake, and so fayntly pursued by the later writers, as of them I must conclude, I do rather wishe itt than belyeve itt. Ruffina is sayd to have sent hether bookes and messuages to her friends, and that thereby men weare converted to Christ. But that conjecture beinge altogether founded upon Martiall's verses in prayse of her and her children, is in my opinion well confuted by a late author, provinge that it could not in lykehood bee one and the same woman who entertayned St. Paule when

hee was in Rome, and whom Martial commended for her beautie 60 years after in the days of Trajan; observinge that yf it had beene the same, shee must have been in the daye of Martial exceedinge old and so not so highly to be prayed for her beutie. Notwithstanding, it may bee, that God used all or most of theise as messengers or meanes of his Grace to this Island. And although, because it maketh much for the honor of our contrie, I could easily beleve itt, yeat to say my opinion, the arguments, at least such as I have seene, are not so pregnant for any of the rest, as for the beeing here of Joseph of Arimathea. For besides that some annient writers do beare record hereof, those epithets and names which have beene by our anncestors geven to Glastonburie (the place which Arviragus then king as is reported, gave him to dwell in) is no small testimonie of the truth hereof. For wee fynd it in annient charters called *the land of God, and the grave of the mother of the Sayntes*; and in the charter of confirmation of that abbie from H. 2. recitinge the charters of many of ancient kinges before the conquest, it is sayd to be first built by some of the disciples of Christ themselves. To this may be added that which in the German cronicles wee fynd reported of one Suetonius a nobleman's son of Britaigne, who about 70 or 80 years after the tyme assigned for the coming hether of Joseph, beinge converted a Christian, and baptized by the name of Beatus, departed out of England for the farther confirmation of his sayth; and after he had longe lived in the obedience of the gospel in Germanie, died there about 110 yeares after Christ. This nobleman by some late authors is verie probably gessed to have beene converted by Joseph. A more cleare testimonie hereof is, that those two messengers which Lucius about 110 yeeres after the tyme assigned to the comminge hether of Josephus, sent unto Eleutherius, weare both of them bredd in or neere the very place where Josephus and his disciples are said to be most resident, namely neere Glastonbury, as by their names is evident; the one of them beinge in histories called Elvanus Avalonius, of the isle of Avalon, the other Melgunius

gnius de Belga of Wells. And though the same men wear also Christians before they departed hence, of which, beside that it is so reported of them in historie, and so verie lykely to bee som of the fruite of that side of the gospell which by Josephus was sown in those partes, this is also an argument. They both weare by Eleutherius joyned with Faganus and Damianus in the ministry of the Gospell, the which, it is lykely would not so have beene, but that they weare found to bee men well grounded in the fayth. With this do concurr all our later historiographers for 200 yeares last past. And this is the opinion of Cæsar Baronius uppon the view of them all. So as that Josephus was heere, and that he lived and died at Glastonburie, I do not much doubt; the greatest doubt is of the tyme of his coming hether, the which by som authors is sayd to bee about the 64th yeare after Christ. But in my opinion it is most unlykely so to bee. For wee reade in the 15th chapter of St. Mark, that hee was att the tyme of the passion, *nobilis decurio* which is, how well I know not, translated an honorable counsellor. And in Luke 23. *non consenserat consilio & actibus eorum.* Upon which place it is collected that hee was one of the Sanhedrim, and of that counsell which sate in judgment uppon Christ, as was also Nichodemus, who both weare Christ's discipies, but secretly, for feare of the Jewes. By which places wee maye gesse hee was then an old man, and not lykely to have lived after that tyme 64 yeares, beside the tyme which hee lived heere in England; especially not lykely to have undertaken so great a jorney. And this is the error of Holingshed. I do better allowe their opinions which asigne the tyme to bee about the 30 or 31 yeare after the Passion. Though in respect of his age I wold rather belecue it to have beene sooner then otherwise. It is sayd of him that hee came from the Holy Land in companie of Marie Magdalene as far as Marseilles in Fraunce, and was from thence sent over by Phillip the apostle of Fraunce as the Cheefe of 10 discipies sent hether to preache the gospell. But theise thinges are not so certayne, as that which about 110 yeres after hapned in this island touchinge the conversion thereof in the days of Lucius.

cus. Of whose embracing of the sayth, though the historie bee by most men receaved for true, yet have some doubted, supposing that this island beinge by Claudius reduced to a province, had no kinge in those days. This objection is well answered by Baronius, that the Romans possessed not all the island, but that a part thereof, namely beyond the Wall, was in the handes of the Britaignes. Agayne, that Lucius might bee a pettie kinge under the Romans, as in many other provinces they had the lyke. But the consent of writers herein is so generall, as no doubt neede be made heerof. Another famous and more publick conversion of this island was about 400 yeares after by Augustine sent from Gregorie the I. At which tymes the Saxons had dominions heere; and had almost utterlie extinguished the religion planted by Elentherius. Of this I will forbear to speake perticularlie, being a historie so familiarly known. Neyther will I touch the controversie whether those that first preached here came from the East or the West, nor how far religion was then corrupted, and in what poyntes it remayned pure, beinge questions which require longe discourse, and more learning then I have.

N° XXXI.

Of the Antiquity, Use, and Ceremony of lawfull Combats in England.

By Sir ROBERT COTTON, Barr.

22 May 1601.

WHERE differences could not be determynd by legal proof or testimony, the party was allowed his purgation, which was either *canonica* or *legalis* *. The first, which was by oathe, was called *canonica*, because it was lawfull: the other, which was either *per aquam*

* Lib. 3. Capit. Caroli magni de testibus. Bracton lib. 3. cap. 18. fol. 137. *condentem*,

candentem, ferrum ignitum, or duellum was called *Vulgaris*, because those methods of purgation were brought in by the barbarous people without the pretext of any lawe, untill the Gottish and Lombard kings, seeing their subjects more addrested to martial discipline then to civil government, reduced those tryalls to forme and rule, the constitutions for which are nowe incorporated into the civil law *.

From these northern nations, of which the Saxons and Normans or Northmanni are parte, it was brought into this land. And although longe agee it grew into disuse, and was both by the decrees of king Desiderius Lutprandus, and the mother church, discontinued amonge the Lombards, as soone as they grewe civilised in Italy, yet it conteynned till of late with us as a marke of our longer barbarisme. Neither would we in this obey the see of Rome, to which wee were soe long in many respects observant children, and the which, for that in the duell, *condemnatus sepe absolvitur, and quia Deus tentatur*, decreed † soe often, and streightly against it.

In England this single combatt was either granted to the party by licence extra-judiciall, or by legal process. The first was ever from the kinge, as a chiefe flower of his imperiall crowne; and it was for exercise of armes especially.

Thus did Richard the First gyve leave for tournaments in five places of England, *inter Sarum & Wilton, inter Stamford & Walenford, &c.* *Ita quod pax terra nostra non infringetur, nec potestas justitiarum minorabitur* §. For performance wherof, as likewise to pay unto the king according to their qualities or degrees, a sum of money proportionable, and that to a good value, and to the advantage of the crown, they took a solempne oath. The like I finde 20 Edw. 1. and 18 Edw. 3. where it is granted *viris militibus comitatus Lincoln* to houlde a just thear every year †. Richard Redman, and his three companions in armes, had

* *Leges Lombard*, foll. 17. 6. *Lutprandus rex. Propter consuetudinem gentis legem impliam vetare non possumus. Ex papensi hist. lib. 9. cap. 11.*

† *Lib 5. Decret. 2 V. cap. 2. Quest. 4.*

§ *L. Rubr. in Saccario in Breve Rog. Arch. Cant.*

‡ *Rot. Parliam. 20 Ed. 1. Pat. 18. Ed. 3. m. 44. Part. 2d.*

licence of Richard the Second: *hastiludare cum Willielmo de Halbarton cum tribus sociis suis Scotis apud civitatem Carloli* *. The like did Henry the Fourth to Jo. de Grey †. And of this sorte I finde in record plentifull examples.

Yet did Pope Alexander the Fourth, followinge also the steps of his predecessors Innocentius and Eugenius, prohibit through the all Christendome, *detestabiles nundinas vel ferias quas vulgo tornamenta vocant, in quibus milites convenire solent ad ostentationem virium suorum & audacie unde mortes hominum & pericula animarum sepe conveniunt* ‡. And therefore did Gregory the Tenth sende to K. Edward the First his bull, *pro subtrahenda regis presentia a tornamentis in partibus Francie* §, as from a spectacle altogether to a Christian prince unlawfull. For *gladiatorum sceleribus non minus cruore perfunditur qui spectat, quam ille qui facit*, saith Lactantius ||. And *quid inhumanius quid acerbius dici potest?* Saith St. Cyprian ¶, then when *homo occiditur in hominis voluptatem, et ut quis possit occidere, peritia est, usus est, ars est. Scelus non tantum geritur, sed docetur. disciplina est ut perimere quis possit & gloria quorum peremis*. And therefore Constantine the Great, as a fruit of his conversion, which Honorius his Christian successor did confirme, established this edict. *cruenta spectacula in otio civili & domestica quieti non placent. Quapropter omnino gladiatores esse prohibemus* ††. Their permission hear amonge us, noe doubt, is not the least encouragement, from foolish confidence of skille, of soe many private quarrels being undertaken.

Combatts permytted by lawe are either in causes criminall or civill, as in appeales of treason; and then out of the court of the constable or marshall. Soe was that betweene Essex and Mountfort in the raigne of Henry

* Paten. anno 19 Ric. 2. p. 3. m. 16.

† Paten. anno 5 Hen. 4.

m. 8. ‡ Matthew Paris, Roger Stoveden, Concll. Roman, anno

1179, § Bulla Greg. 10. dat. anno 3. Pont. || Lactantius De-

celmar. instit. cap. 6. ¶ St. Cyprian lib. 2. Epistol. 12. †† Euseb.

in vita Const. lib. 3. Sozom. lib. 1. cap. 8. lib. 11 cod. Glad. Ex cod.

Theodosiano. Theodoret. lib. 5. cap. 26.

the First for forsaking the king's standard *. That be-
twene Audley and Chaterton for betraieing the forte of
Saint Salvors in Constantine 8 Rich. 2 †. And that of
Bertram de Usana and Jo. Bolmer ‡, *coram constabulario*
& *marescallo Anglia de verbis proditoriis*, anno 9 H. 4.
The forme hereof appeareth in the plea rolls, anno 22
Edw. I. in the case of Vesey §. And in the booke of the
marshalls office in the chapter ¶: *Modus faciendi duellum*
coram rege.

In appeales of murder or robbery the combatt is graunted
out of the court of the King's Benche. The presidents
are often in the Bookes of lawe, and the forme may be
gathered out of Bracton and the printed reports of Ed.
3. and Hen. 4 ††. All being an imitation of the Nor-
man custom, as appeareth in the 68th chapter of their
customary; from whence wee seeme to have brought it ††.
Thus farre of combatt in cases crymynall.

In causes civill it is graunted either for tytle of armes
out of the marshall's court, as betwene Sir Richard
Scroope and Sir Robert Grosvenor ††, Sitsilt and others §§.
Or for tytle of land by a writt of right in the court of the
Common Pleas. The experience hereof hath byn of late
as in the case of Paramour, and is often before founde in
our printed reports, whear the manner of darraigning
Battail is likewise as 1 Hen. 6 †††. and 13 of Eliz. in my
Lo. Dier expressed ††.

To this may be added, though beyonde the cogno-
scense of our common law, that which hath in it the best
pretext of combatt, which is the saveinge of Christian
bloud by deciding in single fighte that which would be
otherwise the effect of publique warre.

* Jocelinus de Brackland cap. 12. † 2 Pars. Pat. 8. Ri. 2. m. 8.

† Rot. Vasc. anno 9 Hen. 4. § Placit coram rege 12 Ed. I.

‡ Lib. de officio marescall. †† Bracton lib. 3. cap. 21 anno. 17 Ed.

3. 9 Hen. 4. †† Ex consuetud. ducatus Norman. cap. 68. Tit. de

Sequella mulier. foll. 145. †† Ex breve reg. originali, ap. R. C.

§§ 14 Ri. 2. lib. breve regis. ††† Reports anno 1 Hen. 6. †† Dier.

anno 13 Eliz.

Such

Such were the offers of Richard 1. * Edw. 3. † and Richard the Second to try their right with the French king body to body ‡, and such was that between Charles of Aragon and Peter of Terracone for the isle of Sicilie, which by allowance of pope Martinus the Fourth, and the colledge of cardinalls, was agreed to be fought at Bordeaux in Aquitaine §; wherein under favor he digressed farre from the steppes of his predecessors Eugenius, Innocentius, and Alexander, and was noe pattern to the next of his name, who was soe farre from approveing the combatt betwene the dukes of Burgundy and Gloucester, that he did inhibit it by his bulls, declaring therein, that it was *detestabile genus pugnae omni divino & humano jure damnatum & fidelibus interdictum* ||. And he did wonder and greive, *quod ira, ambitio, vel cupiditas honoris humani, ipsos duces immemores fecerit legis domini & salutis aeternae, qua prius vatus esset quicumque in tali pugna decederet. Nam sepe compertum est superatum fovere justitiam & quomodo existimari quisquam potest rectum judicium ex duello in quo inimicus veritatis diabolus dominatur* ||?

Thus farre of Combatts, which by the lawe of the land or leave of the soveraigne have any warrant.

It rests to instance by a few records what the kings of England, out of regall prerogative, have done in restraint, either of martial exercise and pryvate quarrelle, or in determyning of them when they were undertaken; and to shew out of the registers of former tymes, with what eye the lawe and justice of the state did look upon that subject that durst assume otherwise the sword or scepter into his owne hand.

The restraints of tornaments by proclamation is so usuall, that I neede to repeat, for forme sake, but one out of many. The first Edward, renowned bothe for his wisdom and fortune, *publice fecit proclamari & firmiter in-*

* Rog. Hoveden.

† Adam Merimouth in vita. Ed. 3.

‡ Rot.

Franciz 7 R. 2. m. 24.

§ Camoana delle famiglie regali di Spagna fol. 110. Juan do Molina Ceronica do los reges de Aragon, fol. 43.

|| Bulla Martini, 5 dat. iij Kal. Maij anno 8 pont.

|| Ibid.

*hibere, ne qui sub forisfactura terrarum & omnium teno-
mentorum, torneare, bordeare, justas facere, aventuras
querere, seu alias ad arma ire præsumant sine licentia regis
speciali **

By proclamation Richard the Second forbad any but
his officers, and some few excepted, to carry any sword or
long ballarde under payne of forfeiture and imprison-
ment †. The same kinge in the 19th yeare of his raigne,
and upon the mariage with the French king's daughter,
commanded by proclamation: *Ne quis miles, armiger, seu
alius ligeus, aut subditus suus cujuscunque status, aliquam
francigenam, seu quemcunque alium de potestate & obe-
dientia regis existens, upon what pretence soever, ad ali-
quid facta guerrarum, seu actus armorum exigat, sub fo-
risfactura omnium quæ regi forisfacere poterit ‡.*

And as it hath ever rested in the king's power to for-
bid combatts, soe hath it been to determine and take
them upp. Thus did Richard the Second in that foe
memorable quarrel betweene Mowbrey and Hertford by
exileinge them both §. And when Sir John de Anesty
and Tho. de Chatenton were readie to fight *eandem que-
relam rex in manum suam recepit*, saith the recorde ||.
And *de mandato regis direptum est prælium inter Johan-
nem Bolmer & Bertramum de Vesana in the tyme of Henry
the Fourth ¶.*

Sir Jo. Fitz Thomas beinge produced before the earle
of Gloucester deputy of Ireland; and thear challenged oy
Sir William de Vesey, to have done him wrong in report-
ing to the kinge that the said Sir William should have
spoken against the kinge defamatory wordes, which Sir
Jo. there presented in a schedule ††: *prædictus Willelmus
audito tenore scedule prædictæ dementitus est prædictum
Johannem: dicendo mentitus es, tanquam falsus & pro-
ditor. Et denegavit omnia sibi imposita, & tradiit va-*

* Placita anno 19 Ed. 1. Placita 31 Ed. 1 † Rot. Claus. 19 R.
1. dat 26 Feb. ‡ Claus. 19 R. 2. in dorso. § Cron. S. Albani
22 R. 2. || Pars Patentium anno 8 Ric. 2. m. 8. ¶† 2 Rot.
Vasconie anno 9 Henrici 4. m. 14. †† Placita coram rege 22 Ed. 1.

• dium in manum iusticiarij qui illud admisit. Et prædic-
 • tus Johannes advocavit omnia & dementitus est finititer
 • dictum Willolmum. Whereupon the combat was granted, and
 • the time, place, and inrolled proceſs adjourned into Eng-
 • land before the King, who with his counsell examyning
 • the whole proceedinge, and that *Quia Willelmus attachi-*
 • *atus fuit ad respondendum Johanni prædicto super defama-*
 • *tionem principaliter. Et non sit uſitatum in regno iſto pla-*
 • *citare in curia regis placita de defamationibus, aut inter*
 • *partes aliquas duellum considerare in placitis de quibus cog-*
 • *nitio ad curiam regis non pertinet* *. And for that the
 • judge vadia prædictorum Johannis & Willelmi cepit priuſ-
 • quam duellum inter eos. Consideratum & adjudicatum fuit
 • (quod omnino contra legem eſt & conſuetudinem regni)
 • therefore per ipſum regem & conſilium concordatum eſt quod
 • proceſſus totaliter adnulletar. And that the ſaid John and
 • William eant inde ſine die, ſalva utrique eorum actione ſua
 • ſi alius de aliquo in prædicto proceſſu contento loqui volu-
 • erunt.

• A combat granted in a writt of right, Phillipp de Pugill
 • one of the champions, *oppreſſus multitudine hominum ſe*
 • *defendere non potuit*, whereupon the people againſt him in
 • perpetuam defamationem ſuam in eodem duello creantiam pro-
 • clamabant, which the king underſtandinge, *aſſenſu ſtatuit*
 • quod prædictus Philippus propter creantiam prædictam libe-
 • ram legem non omittat, ſed omnibus liberis actibus gauderet
 • ſicet ante duellum gaudere conſuevit †.

• What Penalty they have incurred, that without lawe
 • or licence have attempted the præctiſe of armes or their
 • own revenge, may ſomewhat appeare by theſe few fol-
 • lowing records out of many that might be cited.

• William earle of Albemarle was excommunicated ‡, pro
 • toriamento tento contra præceptum regis. To which
 • agreeth at this day, for the duell, the counsell of Trent §,
 • and that held at Biturigo ||, anno 1584.

• Rb. Parliamenti anno 13 Ed. 1. † Patenti anno 13 H. 3. m. 3.
 • ‡ Dors. pat. anno 4 H. 3. § Conſil. Trident ſeſſ. 9. Tit. de re-
 • form. || Conſill. Biturienſis ſoll. 1022.

John Warren earle of Surrey was fined at 10,000 markes, *pro quadam transgressione videlicet in insultu facto in Alanum de la Zouche* *.

Talbois was comytted to the Tower for attemptinge to have slaine the lord Cromwell †. And becaufse *Robertus Garneys insultum fecit & percussit Edm. Fitz William, inquisitio facta est de omnibus tenementis & catallis predicti Roberti* ‡.

Edward Dalmgrige accused by Sir Jo. Seintlegier, before the king's justice, *pro venatione & aliis transgressionibus*, answered, that those accusations weare false, and threw downe his glove, and challenged *dirationare materias predictas versus predictum Johannem per duellum: sed quia contra legem terræ vadiavit inde duellum*, he was comytted to prison *quousque satisfeceret domino rege pro contemptu* §.

Sir Nicholas de Segrave, a Baron, challenging Sir Jo. de Crombwell (contrary to the king's prohibition) because he would not fight with him in England, dared him to come and defend him self in France. Therein, as the record saith, subjecting as much as in him laye the realm of England to the realm of France. But he beinge staied in his passage at Dover, was comytted to the castle, and afterwards brought to the King's Bench; and there arraigned before the lords, to whom he confessed his fault, and submytted himselfe to the king *de alto & basso*. Wherefore judgment is gyven in these wordes: *Et super hoc dominus rex volens habere advisamentum comitum baronum magnatum & aliorum de consilio suo, injunxit eisdem in homagio fidelitate & ligeantia, quibus ei tenentur, quod ipsi considerent qualis pœna pro tali facto fuerit infligenda. Qui omnes habito super hoc concilio dicunt quod hujusmodi factum meretur pœnam amissionis vite* ||. Whereupon he was comytted to the Tower, and Robert Archer that attended him into France was comytted to prison, ar-

* Claus. anno 3 Ed. 1. m. 3.
Inquis. anno 16 H. 6.

† Parl. anno 24 H. 6.

‡ In-

§ Placita de quo warrant. anno 8 R. 2. Suffex.

|| Placita coram rege Pas. 33 Ed. 1.

raigned and fyned at 200 Marks *. In the end, and after much intercession, the lord Segrave was pardoned by the king, but could not obtain his liberty until he had put in security for his good behaviour. This course houldeth proportion with an antient law made by Lotharius the emperor in these wordes : *de his discordiis & contentionibus studere solent & in pace vivere noluerint. & inde convicti fuerint, similiter volumus, ut per fideijussores ad nostrum palacium veniant, & ibi cum nostris fidelibus consideremus quid de talibus hominibus faciendum sit* †.

N^o XXXII.

Of the same.

By Mr. DAVIES.

22 May 1601.

OUR question is of the antiquity and manner of lawful combats, soe that we do admit and presuppose, that some combats are laweful; that is, that some combats are allowed and justified by the lawe. Wherein (although the law of England be directly contrary to the canon law, which condemneth all single fights that are voluntarily undertaken of bothe parties either for tryall of the truth, or for any cause but for defence of life or member, when a man is assaulted by his enemy, as beinge prohibited by God's law, which saith, *non tentabis Dominum Deum tuum*; yet the ancient custom of this realm, which gave such allowance to this kind of triall, as that in Glanville's time, whoe lived under Henry the Second, it was used allmoste in all actions reall and personall, doth not seeme to bee begunne and continewed without reason. For albeit a rash and disorderly undertaking of a combat, where the cause is not

* Placita coram rege Trin. 33 Ed. 1.
circa an. 830.

† Leg. Longobard, fol 45.

judicially

judicially depending before the magistrate, and where it is not prescribed by order or authority, maye justly be condemned as unlawfull; yet where there is an appeale, or an action hanging before a lawfull judge, before whom the parties are admitted to this kinde of tryall, this maye not be deemed a wilfull or voluntary act of the parties, but the act of the court, the act of lawe, and the act of justice. Again, if by the very law of nature, a man maye defend his life with his life, when he is violently assaulted by his enemy, and hath noe other meanes of escape, shall he not by the same reason defend his life with his life, when he is appealed of any capitall crime, as treason, murder, or robbery, and hath noe other prooffe to clear him? And if a man may defend his goods and possessions with his life when hee is eyther robbed or forciblye diseized, shall he not doe the like in an appeale of robbery, or in a writt of right, for the same goods and possessions? And whereas the canonist speakes of the *tempting of God*, and compares the triall by combat to the triall *ferri candentis & aquae bullientis*, which was likewise in Glanvill's time used in England uppon appeales of treason where the defendand was eyther 60 yeares olde or mahemed, and so disabled to de-rain battaile: doubtless there is a great difference betwixt these trialls, for indeede in the triall by red-hott iron and boiling water, a miraculous preservation is to bee expected. And therefore it is a plaine trying and tempting of God, but in an equall combat that is fought without disadvantage, the strength, the spirits, and the powers of nature do decide the controversy.

I thought it not impertinent for the honor of the law of England, which hath an excellent harmonie of reason in it, to shew uppon what reasons it gave allowance to the triall by combat; with this, that this kinde of triall hath alwayes beene an argument of a warlike and valiant nation, though the truth bee that it carryes with it a little taste of barbarism. For it first tooke beginning among the Gothes and Vandalls; from them it was derived to the Saxons and other people of High Almaine; from them to the Nor-mans;

mans; and from the Normans to us. But nowe lett us see in what courts, for what causes, and with what ceremonies lawful combats were used when combats were in use within this realm of Englande.

Tryall by combats was admitted cyther in the court of the constable and marshall uppon appeales of treason; or in the courts of the king uppon appeales of murder or robbery, or for title of inheritance in a writ of right.

The manner of triall by combat in the court of the marshall and constable.

First, it appeares by the book of 37 H. 6. fol. 20. that the law whereby the constable and marshall doe proceed is the law of the land, and the law of the king; and the king's justices shall take notice thereof. For if a man be appealed before the king's Justices for the death of a man, the defendant may justifie and pleade that he killed him in a combat before the constable and marshall. And this is a good justification by the law of the land.

Nowe for the proceeding and triall in the marshall's courte uppon appeales of treason wherein the combat was admitted, it was in this manner.

First, a bill of challenge together with a gantlett was delivered into the court by the appellant. The defendant denied the point of the bill and accepted the gantlett. Then if the appellant had no witnesses to prove the matter of his appeal, the marshall prefixt a day within forty, for deraigninge the combat, taking pledges of bothe parties to appeare at the day, and to do battail between sun-rising and sun-setting. The place appointed for the combat was a hard and even ground, rayled within certain lists, sixty foot in length and forty foot in breadth. Without the lists were certain counterlists, within which the marshall's men came, as well to attend any extraordinary accident within the lists, as to keep off the presse of the people without: their weapons appointed were a glaive, a long sworde, a short sword, and a dagger. At the day, the appellant did appear, and came to the east gate of the lists, where he was admitted

to

to enter by the marshall himselfe, together with his armor, weapons, vittails, and his counsell with him. And then he was brought to a certain place within the lists, where he attended the coming of the defendant. The defendant, if he appeared not, was called in by three proclamations made by the marshall of the kinge of heralds of that province wherein the combat was darraigned.

The marshall's clarke did enter into his registry their coming and the tyme of their coming, and the manner, whether on horseback or on foot, the fashion of their armor and their weapons, the colour of their horses, and the like.

The marshall himself did measure their weapons; and then the marshall had a clark ready, who brought forth a crucifix and a masse book, whereuppon bothe the appelland and defendant did take their oaths. But before they tooke their oaths, the bill of challenge of the appelland, and the answer of the defendant was read unto them by the marshall's clark. The oaths which they took were; first, that their appeal and defence was trew; secondly, that neither of them had advantage of the other, by weapon, charm, or enchantment; and thirdly, that either would do his best devoler to vanquish his enemy. Then proclamation was made at every corner of the lists for the clearing and voydance of the lists. And then the combatants being ready, the constable or marshall sitting at the king's feet, pronounced these words with a high voice: *Leffes les aller, leffes les aller, leffes les aller, & faire leur devoir.*

In the fight, if either of the parties did give any sign of yealding, or if the king, being present, did crie *hoe*, the constable and marshall did part them, and observed precisely what advantage or disadvantage either had of the other at the instant; for if they should bee awarded to fight again, they are to be putt in the same posture as they were before.

If the king tooke up the matter they were brought honorably out of the list, neither having precedence before the other. If the battail was performed, and one party was vanquished, then, in case of treason, the rails of the lists were

were broke down, and the party vanquished was driven out at a horse's heels, and carried presently to execution by the marshall.

The manner of triall by combat in a writt of right.

In a writt of right, when the mise is joyned to be tryed by battaile, the battaile is ever both waged and done by champions and not by the parties. And the champions must bee free men, and such as might be competent witnesses in the cause; for sayth Glanville, lib. ii. cap. 3. *talis debet esse Campio qui sit & esse posset inde testis idoneus*. For this reason the parties themselves cannot in proper person wage battaile, *quod id fieri non potest, nisi per testem idoneum audientem vel videntem*. And therefore before the Stat. of Westminster i. cap. 40. the champion did swear, when he waged battaile, that he saw the deffendant or tenant take Esplees of the land, or else heard his father say on his death-bed, that he saw it, and enjoined him to testify as much. For the words of Glanville are to that effect, where he makes the deffendant say, *et hoc paratus sum probare per hunc liberum hominem cui Pater suus injunxit in extremis agens, in fide qua filius tenetur Patri, quod si aliquando loquelam de terra illa audiret, hoc diracionaret sicut id quod pater suus vidit & audivit*. But because the champions were for the most part perjured in taking this oath, it was ousted by the Stat. of W. I. cap. 40.

The champions did first wage battail; that is, they did first offer themselves to the court, and gave pledges to do battail; and then at another daye they came again, and did acquite their pledges by dooing and performing the battaile.

The waging of battail was in this manner.

At the day when the tenant was demandable, the deffendant's serjeant did rehearse the count. The tenant's serjeant made his deffence, and pleaded, that he was ready to defende his right by the body of his free man, whome hee presented at the bar, holdinge him by the right hand, whereon

whereon he wore a gauntlett. The defendant's serjeant replied in the like manner, and brought his champion to the bar, with the same ceremony. And this was done by the Serjeants, though the parties were present in proper person.

Then a day was appointed when the champions were to appear in their array. At which day they came into the court, and the one was placed on one side of the court, and the other on the other side, bare-headed and kneeling. Then the cheif justice did call for their gauntletts and searched if there were in each gauntlett five pence, in every finger stall a penny, and then re-delivered the gauntletts to the champions. Then he demanded of both the champions severally, if they would performe the battail; and they answered that they would. He then demanded of the serjeants, if they could say ought why the battail should not proceede: and they answered, that they could saye nothing. Then taking pledges of the champions he gave them a daye to do their battail, charging the parties that they should not suffer their champions to come into market, fair, nor taverne, and commaunding the champions, as well to do no hurt or mischeif, to each other, in the meane time, as also to goe, the one to Powles, and the other to Westminster, there to offer up their five pence in honor of the five wounds of Christi, and to praye to God to give victory unto him that had right. At the day of the battail the parties and their champions did appeare againe at the barr; and then the count and the defence, and the continuances, and names of the champions were rehearsed. Then the defendant brought forth his champion in red leather with a red targett at his back; and a knight held his red baston or trunchion of five quarters in length, blunt at the end without a knobb. Then the cheef justice did measure their staives, and searched them if they had any charm or herbe about them; and if they found any, as they found rolls of orizons about the champion of the bussloope of Sarum 29 E. 3. in a writt of right for the castle of Sherborne, they dismist the champions for that daye. But if all things were well, and without disadvantage, then they proceeded to dooinge of battaile at the place appointed, which was

commonly in some open feild neer Westminster, as in 13 Eliz. in Tuthill Feild. A stage was erected in forme of a courte of justice, the lists rayled in 20 yards square, and the champions were brought in by two knights, and then, after proclamation made, an oath was given unto the champions, not much differing from that given in the marshall's court, and then the champions did their devoir one against the other, and according as the victory fall out, so judgment finall was given in the action.

The manner of gaging battail in case of murder or robbery.

The defendant having pleaded not guilty, and having put himselfe upon deffence by his body, the plaintiff was demanded by the courte, and commanded to take the deffendant by the left hand, and to say unto him, laying his right hand upon the book, and calling him by his name of baptism; *T. . . . whom I hold by the hand, I doe heere charge thee, that thou such a year and daye didst feloniously robe me of two of my kine, and this am I ready to aver by my bodye as a good and lawfull man, and that my appeale is true; soe help me God and his Saints.* Then they disjoined their handes again, and the deffendant tooke the plaintiff by his left hand, and spake to him in this manner, *W. calling him likewise by his christian name, whom I hold by the hand, thou hast falsly lyed uppon me, for that I did not robe thee of thy kine, as thou hast charged me, and this am I read to maintaine by my body, and that my deffense is true; soe help me God and his Saints.* Then the plaintiff within three dayes found pledges of his battail, and went at liberty, but the deffendant was commanded to the marshall, whoe was to suffer him to have his ease, and manger & boyer; and the plaintiff was commanded, that the night before the battail, he should come to the marshall to be arrayed and armed by him, so that he might be ready the next morning at the rising of the sun to do battail. The appellants head was ever covered, but the defendants rayed; yet upon an endictment, if the party indited became an approver, his head was rayed and the appelee was covered, and generally in the battaile, upon an appeal, the

Staves

staves of the combattants had knobbs, and therein differed from the bastons of the champions in a writt of right. At the time of the battail, if either of the parties was cast to the earth, the judges might interrupt the battail, and cause the party, that is in such distrefs and disadvantage, to come before them, and then demand if he will have any more of the battail, and if he answer he will, then is he to be layd in the same disadvantage, and if he refuses to fight, he is presently to be hanged.

Persons excused from battaile.

I. Clergymen : and therefore 42 Eliz, lib. cor. 99, an appelee, when he came into the field, avoyded the battaile by praying his clergy.

II. Cityzens de Londres per charter del Citty.

III. Sexagenarii.

There is this difference betwixt the plaintiff in an appeale and an approver, for if the appellant vanquish he shall be quitt, but if the approver vanquish he may be notwithstanding executed. If an approver appeal twenty he must fight with them all one after another, but if divers approvers appeal one, if he vanquish one he is quitt against all.

No XXXIII.

Of the same.

By Mr. DAVIES.

22 May 1601.

I Supposed, and so yt falleth forth amongst this learned assembly, whylst one treateth of one part of a question, and sume of another, there would be nothinge left for mee to utter concerning the antiquity, ceremony, and use of combatts. But because I would not seem to be silent,

being otherwise enjoyned by the Laws of this Assembly, I have undertaken to proove that combatts are justly abrogated by the laws divine, civill, canon, and national; all which seeme well to disallowe torneaments and combatts done with the sharpe, whereof death might ensue, but especially such combatts whereof the authority of the judge may determine. The arguments then to proove these combatts justly to bee forbidden, are breisly drawn into syllogismes in this sort.

First, Every act is prohibited by the law of God, whereby God is tempted. The precept of the fourth of Matthew is *non tentabis Dominum Deum tuum*; but this combatt is an Act whereby the Divine Majesty is tempted, for this thinge is only sought therein that God would in that fight manifest by victory whither party doth nourish the truth. Therefore yt is prohibited by the law of God.

Secondly, This manner of combatt is the invention of the divil, as appeareth in the laws cited by Bruceus in his booke de Duello. Therefore there is no man who doubteth but that it is repugnant to the law of God.

Thirdly, When a thinge is prohibited by any law; that seemeth also to be prohibited, by which it is effected; but the Divine Law prohibiteth murther, therefore the meanes to committ murther are prohibited, and consequently combatt, the cheife means to murther, is prohibited.

Lastly, Whatsoever is against charity and love of our neighbor, which is the foundation of all vertue, is expresely forbidden. But this manner of combatt is so farre from the love of our neighbor, that it altogether intendeth his hurt and destruction. Therefore the Scripture forbiddeth this combatt.

The canon law, which pretendeth to have received its light and grounds out of the woord of God, doth condemn combat in many places, which for brevite sake I omit, referringe those that desire the knowledge thereof to the bookes of those lawes.

That the law of nations hath combatt in hatred, may thus be verified. All actions resisting to naturall equity, upon which

which the law of nations is founded, are forbidden by the lawe of nations. Now this combatt doth repugn naturall equity, for the equity of the law of nations doth command, that the offenders should be punished, and the innocent absolved, which doth not alwaies happen in combatts. For often, in that fight, the just and innocent are vanquished, and the unjust and wicked are victors. Wherefore combatts are forbidden by the lawes of nations. The civill law doth not inflict a corporal paine in causes pecuniary, but punisheth the offender accordinge to the quality of the offence; therefore the civil law in such cases doth permit no combatt which tendeth to corporall punishment; being contrary to the Lombard's law, which alloweth, and (as I take it) first invented combatts. The civil law, requiring proove as clear as day, when the plaintiff cannot proove the cause, absolveth the defendant. Therefore the civil law abhorreth combatts. For howe absurd a thing is it, that the defendant should bee forced to try his cause by force of armes, at the pleasure of his adversary, when he wanteth sufficient proove? Againe, whatsoever is doune for feare, is saide by the civill Pretoriane law, not to bee good; but when one provoketh another to combatt, in a cause depending in law, he putteth him in feare, whose ostentimes for feare of future hurt letteth fall his right. Wherefore these combatts are not allowed by the civil law. Moreover the law of the emperor Constantine doth defend this conclusion, the woordes of which law are these: *Cruenta spectacula in otio civill & domestica quiete non placent, qua propter omnino gladiatores esse prohibuimus.* And although this lawe seemeth specially to tend to those which were condemned to sword play, and to fight with beasts, yet the generality thereof may rightly be understoode of combatts; for so doth Oldradus de Ponte understand the same, with Jason and Bartholus.

Lastly, Where the magistrate or judge may by his authority compound or end any matter, there combatt is not lawfull. But the magistrate may ende any matter withoute

oute sufficiente prooffe by compelling them to another, or else if there be no sufficient prooffe may absolve the supposed guilty. This is the opinion of most of the canonists and civilians, as of Hostiensis, Bartholus, Petrus, Jacobus, and Cujacius, who calleth the law of the Lombards, to try all things by combatt, a most wicked law; yea, so much the lawes do lothe this kinde of triall, that it ought not to bee permitted by custome, nor confirmed by any edict. Wherefore since spirituall lawes and temporall ordinances stand against these combatts, because sinne and offense ariseth by them, and the damnation of the soule is often hazarded, they are wholly rejected.

Nº XXXIV.

Of the same.

By Mr. JAMES WHITLOCKE.

22 May 1601.

COMBATS are distinguished to be lawful and unlawful. Unlawful combats are those that are fought by private men upon private quarrells arising upon poynts of honor or disgrace, as they term them, of which one Vincentis Serviolo writeth, and these be naturally revenges, and not trialls.

Lawfull combatts are those which are tolerated in the common wealth for triall of causes which cannot be discussed by any evidence on either part, these be called *duella*, *quasi duorum bella*, and are thus described.

Duellum est singularis pugna quæ sit propter probationem alicujus, ita ut qui vicerit probasse creditur, & victus in probatione defecisse. The effect and purpose of single combat is not to decide or discusse, but to condemn or acquit by an accident. For if there be any prooffe it shall not be allowed, and it is called *purgatio* not *judicium*. For *judicium* is when the cause is discussed. *Purgatio* when the accusation is avoyded by an accident on which the cause is put. For Bracton

our

our Englishe author saythe, lib. iii. c. 18. fol. 137. tit. *Corona*. that one shall not defend himselfe by his bodie *quando aliqua violenta præsumptio facit contra ipsum*.

These were called either *canonica purgationes* or *vulgares*; *canonica* were by oath, and so called because they were according to law. *Vulgares* were either *per aquam sudentem*, or *ferrum ignitum*, or *duellum*, and were called *vulgares*, because they were brought in by the people without the precept of any law.

These trials by combat were first brought into Italye by the Longobards, and such people as were more addicted to martiall discipline then to civill government, since which times many constitutions have been made for the order and approving of them; and which constitutions are part of the civill law.

This kinde of triall is condemned by the canon law, and utterly forbidden for two reasons alledged in it. The one *quia condemnendus sepe absolvitur, absolvendus condemnitur*, the other *quia Deus tentatur*. lib. 5. *Decretal. Le Purgat. vulgar.* ca. 1. et 2. fol. 311. *Decret. 2. pars. c. 2. 94. c. memium et c. monomachiam*.

These trialls in England have been either in criminall causes or in civill. In criminal, as in appeales of treason, felony, or manhim. In civill, either in the cause of honor and armes, or in Titles of land.

An appeal in a case of treason, was that between the duke of Hereford and the duke of Norfolk in Richard the Second's raigh, which was to be tried by single combatt at Coventry; but was taken up by the king in such sort as our cronicles report.

Trialls by combatt in causes of felony, are frequent in our law bookes, in appeales of murder and robbery.

Trialls by combat in causes civill, are those that are either for honor or bearing armes, as that between Port and Silte for the bearing of a coat armes in 6 Ed. 3.

Combats in such civill causes are for the trial of titles of land, as in a writt of righte. The form of which kind of triall is set down in my L. Dyer 13 Eliz. to have been in Tuttle-fields, which cannot but be remembred by some in

this

this company. But the combat there was not performed, but a judgment given by default.

The ceremony of these combatts in ancient time was thus, if it wear a criminall cause his profer was, that he was *paratus defendere per corpus suum*, if in a civill *per corpus liberi hominis sui*.

The ceremony of a combat in case of treason is largely set down in our cronicles in the 22 year of Richard the Second in the combat between Norfolk and Hereford, and therefore I will not describe it.

Ceremony
of combat
in case of
Felony 17
Ed. 3.

The ceremony of a combatt in a case of felony I finde to be thus, in 17 E. 3. the defendant with his left hand takes the plaintiff by the right hand, and holding it over a booke saythe: Sir, you that are called by the christian name of John, knowe that I whose christian name is Thomas, did not futch a day and year, in futch a place kil your brother, nor am culpable of that felony, as God me help, and kisseth the booke, and this I will defend against you with my bodye as the court shall award. Then the plaintiff with his left hand taketh the defendant by the right hand, and holdeth it over the book and saith, Hear you, Sir, that by name of Englishmen are called Thomas, you did feloniously futch a year, day, and place kil futch a one my brother, by name, as God me help, and so kissed the booke, and this I deraigne against you by my bodye as the court shall award.

The defendant was committed to the Marshall untill the day of battail in criminall causes, and the plaintiff let at large and warned to come to the marshall the night before the battail to be arrayed, and this is thus defended in 9 H.

9 Hen. 4.
Bracton 3
Lo. cap 21.

4. 3. Yet Bracton in the third book ca. 21 M. 3. saythe, that bothe plaintiff and defendant are to be committed to the marshalls after the battail waged, and so to be kept by them, that no man living speak with ether of them. And when they are brought into the feilde to performe the battail, they must first take this othe: *Audite iusticiarij quod ego non comedi nec bibi nec aliquis pro me nec per me propter quod lex Dei deprimi debeat & lex diaboli exaltari; ita me Deus adjuvet.* This was to acquit themselves from the suspicion of using any enchantments

& whiche

which they match stood in awe of in that blinde age. After this the proclamations were made, and the battail joined. And in 9 H. 4. 3. the plaintiff had this advantage that his hed might be covered but the defendant's might not.

The ceremony of combat in civil cases, as in a writ of right, is described in some sort in 13 Eliz. in my L. Dyer, but not so amply as in 1 H. 6. 7. and therefore I will describe it largely as it is there set down. After the combatt offered and accepted by bothe parties in a writ of right in the court of King's Bench, the champions of both parties cast their gauntletts into the Court with a penny in every finger stall, which were taken up by the clerk of the Court, and the day of combat appoynted. Babington chief justice commanded the champion of the tenant to go and stand in the west end, and then bothe parties kneelinge on their knees before the justices; the chief Justice demanded of Strange and Paston, serjeants of the parties on both sides, if they would alledge any thinge why the champions sholde not be allowed, and they answered no. Cokayne justice bid them see if they were sound men. Then the clerk gave the gauntletts to Babington, who felt whether there were a penny in every finger stall, and then gave one to the champion of the defendant, and another to the champion of the tenant with the money in the finger stalls. Then did Babington chief justice demand of them, whether they would make battail. They answered they were content. Then they commanded again the tenant's champion to stand in the east part of the court, and the defendant's in the west, and to lay downe their gauntletts again in the court. Then did the court demand of the serjeants at bar that were of counsel withe the parties, if there were any cause why they shold delay the battail? they answered, no. Then did the court call for the Champions again, and appointed them the day certain for battail at any hour of the day they should then call for them, and gave one gauntlet with the money in it to one champion, and bad him go to Paule's Church, thear before the entrance of the north door to pray to God to give him the victory that had

right, and commanded the other to do so at the shrine of St. Edward at Westminster. Then the tenant's champion was commanded to go out of the court at the east end, and the defendants at the west; and that they should not speake or come neer one the other, untill they met to undertake the combat. This is the longest description of the ceremony of single combats in this our common-wealthe that I have read of, either in our history, or law books. And this we may observe in the order of it: that by reason of the religion they used in the performance, either had a confidence that God himself wolde be the mean that the victory should be obteyned by him that had right. Thus much I have observed, especially of the use and ceremony of them, the discovery of the time of their first coming into this realm I can but gesse at, and therefore will leave it to them that have better instruction of it.

N^o XXXIV.

Of the same.

By JOSEPH HOLLAND.

May 22d, 1601.

TRYALL by battle if it be for title of Lands, then it is att the election of the tenant, either to have it tryed by the grande assise, where there muste be foure knightes of the Jurye; or else to have it tryed by battle, in which case he ought to have his champion alwayes readye, as appeareth in *Natura brevium*. And so was the order in old tyme when these tryalles by battle were in use, as appeareth by an indenture bearing date xlij Henry iij. wherein the champion for the abbot of Glossenbury was bound by indenture to be always in a readines to fight againste the champion of the dean and chapter of Wells, for the right which the abbot did pretend to have in three lordships: alsoe the wages of the champion is sett downe in the saide deed, and the Mannor of his habite uppon the seale. The original deed I gave unto the right honourable the lord cheefe justice of England. But I have a faire copie thereof
ready

ready to be shewed unto you : his apparell, as appeareth in *Natura brevium*, shall be of white Leather, his coat shall be of red Sandale painted with the arms of his master, if he have arms, and a knight shall bear his staffe, and a varlett his targett, which shall be four corner'd, and of the cullor of his coat ; and the justices shall see that the staves shall be of one length, and their targetts of one breadth, and the champion shall have his head, his hands, and his feet bare.

It appeareth in the pleas of the crown, that 19 Henry 6. in an appeal of felony, that the batle was fought, and the defendant thrown to the grounde, and extreamlie beaten. Whereupon the justices sent for him and demanded of him if he would fight any more, he answered no ; but saide that by the oath that he had taken, he was not guilty ; the justices answered, that if he would fight again, he must be put in the same degree that he was in when they sent for him, and he answered that he would not fight ; whereupon he was hanged incontinently.

But if tryall by batle be in a cause of treason, then the tryall shal be before the constable and marshall of England, and not before the justices, as appeareth by the booke 37 Henry 6. But at the combatt appointed to be fought between the dukes of Hereford and Norfolke, 22 Richard 2. the king himself was present: where the twoe dukes beinge sommoned by an Herauld to appeare before the kinge, there stood forthe a knight, and asked and obteyned lycence to speeke for the duke of Hereford, and saide ; Right deare and souveraigne lorde, here is Henry of Lancaster, duke of Hereforde and earle of Derby, who saith, and I for him likewise say, that Thomas Moubray, duke of Norfolk, is a false and disloyal traytor to you, and to your royal majesty ; and moreover the duke of Hereforde saith, and I for him do say, that he will prove this with his body against the body of the duke of Norfolk within lists: and so likewyse there was another knight that said the like on the behalf of the duke of Norfolke againste the duke of Hereford. Whereupon the day for the battle was appointed, and

when they were both ready to fight, the kinge stayed the combatt, and did banishe them both.

Kinge Henry the fifth at the beseiging the town of Meluns in France, made a greate mine under ground, and they within the town made a counter-mine: one day the kinge of England enterred the mine, and fought with the lord Brabason, governor of the town, and after long fight, they agreed to discover their names, so that the governor would first discover his name, and soe they departed for that time.

Afterwards the town was yielded upon condition that all that were consenting to the death of the duke of Burgoin should be delivered to the king of England, of whom the lord Brabason being one, had been put to death; but he appealed to the judgement of the officers of arms, alledging that by the law of arms, no man having his brother in arms, in his danger, afterwards ought to put him to death; and shewed that he was the king's brother in arms, and that he had fought with the king within the mine, which combat was thought of equal force by the heralds, as if he had fought with the king body to body within solemn lists.

A combat was fought in Smythfield within lists, before the king 21 Henry 6. between the lord Beawfe of Aragon, and John Ansley an esquire of the king's house, which Ansley had the victory, and the king made him a knight, and the lord of Aragon offered his arms at Windsor.

25 Henry 6. John Daind accused his maister William Catur armorer, dwelling in St. Dunstan's parish in Fleet-Street of treason; and a day being assigned them to fight in Smythesfelde, the maister being well beloved, was so cherished by his friends, and plyed with wine, that being therewith overcome, he was slain by his man.

For the antiquity of combats, I find that they have been in use long before the last conquest, and that two kinges fought a combat for this kingdom: first they fought on horseback and afterwards on foot; in the end they agreed to divide the realm between them.

In the time of king John there was one came out of France unto the king's court, and required combat for tryal of the king's right unto the dutchy of Normandy. And although it was not thought expedient to hazard so great a title upon one man's fortune, yet it was thought fit, that he should be fought withall; and therupon choice was made of an Irish Earl, being then a prisoner here in England, whose name was Cursye; but after the Frenchman had once beheld him, he went away privily, and durst not appear at the day appointed. The story sheweth that the king made tryal of Cursye's strength, by striking at a helmet; when Cursye in presence of the king, struck through the helmet soe farr into the block whereupon the helmet was put, that none present could pull it out but he himself.

Froissart sheweth a combat on horseback, between a knight of England and a knight of France, in the time of king Richard 2. which grew upon this occasion. Sir Peter de Courtney, a knight of England having been at the court of France, and having the safe conduct of the king, there was a knight of France named de Clary, appointed to accompany him until he was entered into the marches of Calais. By the way Sir Peter de Courtney went to see the countess of St. Pawlief, daughter of Sir Thomas Holland, and the king of England's sister by his mother, and in talking with the countess, he said, that he did like well of the court of France, but he came out of England to do some feats of arms, but he found not any to encounter him; which words were taken in such evil part by the French knight, that immediately after they came unto the marches of Calais, they appointed a day to meet armed on horseback, to fight for the honour of their countries. In which combat Sir Peter de Courtney was sore hurt, and the knight of France was put in prison, and had liked to have been banished, because the words were spoke by way of talk unto a lady, and not spoke unto a knight.

N° XXXV.

Of the same.

By ANONYMOUS.

BEFORE we come to the fullness of our question of combats consisting of fight, it shall not be impertinent in my conceit to discourse of things from the shell, as the proverb is; and before we treat of the matter and manner of combats, to speak somewhat of fight, which is the very essence of combat; because there can be nothing more excellent or profitable for knowledge and memory, then a naturall and orderly method of discourse. For as Baldus saith in the proem of the digest, *Per ordinem, intellectæ res magis delectant animos, mentes magis nutriunt, sensus magis illuminant, et memoriam reddunt clariorem.* Wherefore the law of method doth require, that the most common and general things should be first spoken of, for the ignorance of them will hinder the knowledge of the specialities. Now amongst the variable axioms of each thing, nothing is more needfull then the definition of the same, which as a light doth shew the way to the true knowledge of what the thing is, whereof we entreat. For which cause, since we determine to speak of combats, and not of fight in general, it may seem to some, that we justly might pretermit any discourse or definition of this general *pugna* or fight, and only speake of the particulars. But because the knowledge of what fight is, will be a help to the following matter, we will not forbear to make our entrance there withall, and define *pugna* or fight to be an act in which two adverse parties contend for victory. This contention or fight is either that which is commonly called wars in general, or that which now we have in hand, special combats. But because we are not to speak of wars, as war called *bellum*, is universally taken, but of combats, whereunto we are especially limited, I leave all general warre, and only speake of combats called *Duellum* or *singulare certamen*:
 XXXX
 for

for both words are mightily confounded both by divines and lawyers, since in truth they be two distinct things, if we will draw them to their time and proper nature, although *duellum* of right is *parvum bellum*; and in old time that was called *Duellum*, which we now call *Bellum*, as appeareth by Horace, when he saith, *Grecia barbarie lento collisa Duello*. And Livy in his first book and first decade describing the ancient manner of proclaiming war, saith, *Puro proque duello querendas censeo*; but now by received use they are distinguished, and *Bellum* is one thing and *Duellum* quite another, and of one other nature; the discourse of which *Duellum* shall contain somewhat of the several names belonging to combat: of the antiquity of the difference between war called *Bellum*, and combatte called *Duellum*: of the definition of combat of the division: of the form, and of examples thereof, (which plentifully adorning our histories shall be sprinkled here and there as the progress of this treaty shall require): and lastly, of the taking away, or forbidding of them.

First, the several names of combat as they be now in use, are *Monomachia* taken from the Greek, and *Duellum* or *singulare certamen* used by the Latines; which, though they be now taken in one sense, yet are different as I sayed. For *Duellum* may be a conflict of divers persons, at once, as well as of two single persons, as after shall appear; when *Singulare certamen* can only be of two persons, and no more.

For the antiquity of combats, I find none more ancient then that amongst the Hebrews, of David and Goliath in the first book of the Kings; amongst the Grecians that at the siege of Troy, of Æneas and Diomedes; that of Paris and Menelaus; and that in the camp of Alexander, between Drosippus and Carragus; amongst the Romans, that of the *Horatii* and *Curiatii*; and that of Edmund Ironside and Canutus the Dane amongst the English Saxons. So that I cannot yield to those which attribute the invention of combats no higher then to the Huns and Lombards about some 400 years after Christ; unless you will say that the

Lombards were the first, that invented these combats for trying out the truth of any matter; when the combats before that were rather for victory and honour then for such trial: those Lombards being in truth the first that delivered any laws thereof. For the ancientest laws that ever I could yet see touching combats, are those which are intituled, The laws of the Lombards, which I have in French of great antiquitie, and are by the Civilian Cuiacius, and many others called wicked laws.

For the difference of *Bellum* and *Duellum*, I find somewhat set down by the Civilians, and especially Henricus Bocerius Salcatinus, whom I most favour, leaving Alciate, Bartholus, Paris, Hoverius Cagnotus Vafqius, and all others writers of *Duellum* or *Singulare certamen*, because I see their definitions of *Duellum* are not so perfect as that of Bocerius, as I will hereafter sufficiently prove in this following speche. The difference then between *Bellum* and *Duellum* is principally in the form and accidental parts, for in many things they agree, as in the substance, the effects, and many causes: for as fight is the substance of the wars, so is it of combat; and as victory is the end of the one, so is it of the other, and the things which occasion *Bellum* may also be the cause of *Duellum*: soe that agreeing in many things, they principally seem to differ in form and number of persons. For war properly consisteth of one army or host of men fighting for victory; but so doth not any kind of combat; for it cannot be called *Bellum*, unless it have *exercitum*. Now *exercitus* or one army doth consist of one whole collection or assembly of soldiers, called *Exercitus ab Exercitatione*, because the number of soldiers, as Vigetius writeth, are in continual exercise, whereby, as Varro noteth, they be made more apt and ready to fight; that one army doth comprehend one infinite number of soldiers, the name of *miles* or soldier and the notation thereof besides other things, abundantly prove, because he is called *Miles, quasi Millesimus* or The thousand Man. For as the Civilians alledge, that each tribe *singula milia militum in bellum mittebant*, according to the saying of Franciscus Conanus and Varro,

Varro, so Ulpianus describeth *exercitum* to be *non unam cohortem neque unam alam sed numeros multos militum, nam exercitui preesse dicimus, qui legionem vel legiones cum suis auxiliis ab imperatore commissas administrat*. And the gloss addeth that there be six legions in one army, and every legion containeth 7100 footmen and 7030 horsemen, so that without an army it cannot properly be called war. But combat doth not consist of any such army or number of men, but only of some few, as three, four, five, or such like, or of two at the least: whereby in form and number they are different from *Bellum* or war; and so to the definition of *Duellum* according to Bocerus Salcatinus.

Duellum, saith he, *est pugna duarum partium citra formam belli dimicantium*; idque si duo tantum manus conserant, *singulare certamen vocant*; whereby he learnedly sheweth: First, that combat is *citra formam Belli*, not like to the form of warre, and that combat doth not only consist of fight of two persons, which is *singulare certamen* or single combat, but is also a fight or contention consisting of more persons, and therefore hath not that name of *Duellum, quasi duorum hominum bellum*, but *quasi duarum partium Bellum*, for so was the fight of the three brothers of Horatii and Curiatii amongst the Romans, where they were three to three, being a combat for dominion over the Albans. So during the wars of Richard the first between England and France, the French king sent to king Richard to appoint a combat of five champions, and he would appoint five others for his part, which might fight in lists for tryal of all matters in controversy betwixt them, to avoid the shedding of more guiltless blood. King Richard accepted the offer with condition, that either king might be of the number, but the French would not grant. Again Edward the third being at Calais, the constable of France and other Frenchmen came to the causeway of Calais, with letters of credence, offering battle to the king of England in the presence of the dukes of Lancaster, the earl of Northampton, and the lord Walter Manny; who in the king's behalf declared to the constable, that the king of England to eschew shedding

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blood, would fight with the French king body to body to try the right, and if he liked not that match, then if he would chuse three or four knights that were nearest to him in blood, the king of England would chuse the like number; but this offer was also rejected. Lastly, the duke of Orleans brother to the French king, made a proud challenge to king Henry the fourth by his letters, that they both might meet in the field each part with an hundred armed knights and squires, both of name and arms to combat to the yielding, and the victor to have his prisoner, and to ransom him at his pleasure. In which histories you see that combats consisted of more than two persons, and therefore is rightly defined to be *Pugna duarum partium citra formam belli*, comprehending divers combatants.

But to leave these examples, and to prove this definition of Salcatinus to be a sound and better definition then those of the other civilians which have set down but maimed and imperfect definitions, we say that one of them defineth *Duellum* to be *Pugna capitalis deliberata hinc inde duorum ad purgationem vel gloriam consequend.* But this definition halteth as well for that combat consisteth of more than of two persons, as before I have said; as also for that it is not always a capital fight; as when learners do make challenges and combat for exercise of martial feats. And further, every combat is not made for cause of purgation and glory, but sometimes for wicked gain, as we see in the challenges of masters of fence and such like. Cagnotus defineth combat to be none other then a fight of two parties contending for victory: but here is no reciprocation of the definition with the thing defined, and therefore cannot be accounted perfect; for warre is also a fight of two parties contending for victory. To conclude, Fernandus Vasquius defineth *Duellum* to be *Nilil aliud quam singulare certamen aut pugna equis legibus dimicantium*, because all combators are not singular combators; for a combat may consist of more than two, as Vasquius himself in the same chapter hath noted. And again all singular combators do not fight with equal laws or conditions; for when one thief assaileth
a true

a true man, which is a single combat or fight, they fight not with equal conditions; so that the same definition of Vasquius concerning combats or single fight is also impertinent; for which causes as I said, I had rather follow the definition of Salcatinus then of the other.

After the definitions of combat, we are to proceed to the division, which is, that all combats are either judicial or unjudicial, and besides judgement.

Judicial combats are those which are appointed and allowed by the authority of the judge, in controversies when other sufficient proofs are wanting for searching forth of the truth, soe that the cause of the vanquished is the worst. For the better understanding of this it is to be known, that these kinds of combats, which are for the most part single combats, consisting of two single persons, are a certain kind of proof or tryal, and defence of the matter by the body of the complainant and defendant: such a combat was under Otho the first, besides Trevers, between the uncle and the nephew, for the right inheritance of lande, and such a combat in Tuthilseild did I behold in our time, in the 13th year of queen Elizabeth about lands; whereof Simon Lowe was plaintiff, and Thomas Paramour defendant, the manner whereof, being worth the reading, is set down by our fellow antiquary Mr. Stowe in his annals. Likewise in the 1st of Henry 6. is the same order of combat delivered, whereof also there is plentiful mention made in Bracton *libro tertio de corona cap. 21.* in Brittone *fol. 14.* and in the year book of 17 Edward 3. folio 2. in 29 of Edward the 3d, in the 9th of Henry the fourth, and in Brook's abridgement: whereunto I referr you, not meaning to be tedious with the repetition of them at large, because our learned lawe antiquarians here present, well can and will, I doubt not, fully delineate the same unto you.

Unjudicial combats besides judgement, are such as the parties themselves do take in hand by challenge besides, or without the authority of the judge, which are of two kinds; that is either for the publick good, or for other causes then the publick good; combats for the publick good are either for the

common-wealth of our country, or for the state of religion, Which combats only are lawful, as Salcatinus sayeth; and consist in a double difference; for either they are directly for the common good, or consequently, or by degrees for the common good. Combat directly for the common good, is that which immediately seeketh the common good, either in succouring the decaying common-wealth by avoiding of further bloodshed in battle, or that which is performed with any traitor to the common-wealth. That for succoring the common-wealth in avoiding of bloodshed, is such as was the combat of David and Goliath amongst the Jews; that of the Horatii and Curiatii amongst the Romans: and likewise of latter time, such as were for the tryal either of right or superiority of title to any territory; which either king, prince, earl, baron, or lord taketh in hand with one another of like estate, for the title or defence of his dominions; as was the combat of Charles of Arragon and Peter of Terracon, recited by Alciate in the 3d chapter *de singulari certamine*. For when they had long warred for the isle of Sicely, at length they agreed by authority of Martyne Bishop of Rome, and the colledge of cardinals, to determine the same by combat at Burdeaux in Aquitaine, where they confirmed by oath that the vanquished should depart and never make a claim to the isle. Such also was the combat between Edmond Ironside and Canutus the Dane for the kingdom of England, in the isle of Olney, in the river of Severn, with condition that whether of them chanced to be victor should be king, and the other to resign his title for ever into his hands. Of which combat some ancient authors treating of those tymes make no mention, but say that Canutus and Edmond fell to composition upon refusal of the combat by Canutus, as hath William of Malmisbry: such also was the combat before-mentioned by king Edward the third, offered to the French king for tryal of king Edward's right and title to the crown of France. So in like manner it is, when any private soldier by the favour of the general, for without his permission he may not do it, doth with equal conditions combat with a
soldier

soldier of the adverse army for the publick good ; thereby to encourage the army of the victor, and to fear the army of the party vanquished. Which kind of combats are oftentimes committed by the foldiers of the bordering Christians of Hungary, and those parts with some Turks : the manner of the combat, and the kind of weapon being first appointed. To such combats for the publick good, are those also to be compared which are made with traitors to the commonwealth, when one accuseth one ether of treason. As is that in the time of Henry 2. For when the king sought to repress the rebellious attempts of the Welchmen, he and his foldiers were at the first approach to the Welch country, set upon in the Straits and sorely repulsed, whereby rumour was spread that king Henry was fled and slain, which false report so discomfited the king's foldiers, that Henry of Essex which bare the king's standard by right of inheritance, threw down the same and fled ; which dishonourable doing was layed unto his charge by Robert de Mountfort, who accusing him of treason, fought a combat with him in tryal of the quarrel, wherein Henry of Essex was vanquished and forfeited all his lands to the king.

In the third year of Richard the second, a combat was fought before the king's palace at Westminster, betwixt Sir John Anesley, knight, and Thomas Katherington, esquire, in which the knight accused the squire of treason, for that where the fortress of Saint Salvoure within the isle of Constantine in Normandy, and which belonged some time to Sir John Chandos, had been committed to the said Katherington, as the captain thereof to keep against the enemy, he had for money delivered the same to the French, when he was sufficiently provided of men, munition, and victuals to have defended it against them ; and for which he appelled him of treason : the combat was fought, and Katherington vanquished. The form of this combat is set down in our histories.

In the eighth year of Richard the second, during the parliament, a combat was fought within lists betwixt an English squire called John Welsh, and a squire of Navarre
that

that accused the said Welsh of treason. But the Navarrais being vanquished, and confessing the truth, was adjudged by the king to be drawn to the place of execution and hanged.

In the twenty-first year of king Richard the second, the duke of Hereford and the duke of Norfolk accusing each other of treason as persons disloyal to the king, and enemies to the realm, the combat was granted. But when they were in the lists to have determined the battle, the king took the matter into his hands, and banished both the dukes. The honourable order and form of which combat is liberally set down in our chronicles. These common examples, amongst many others I have collected out of our historiographers, because they concern combats immediately, and directly implying the publick good, in that they seek to set forth traitors as hatefull enemies to the common-wealth.

The combats which consequently or by degrees concern the publick good, are such wherein men prepare and exercise the force of the body and mind in martial and military functions; as in tilts, tournaments, barriers, and such like, exercised either for the continuance of their activity, or for learning sake; both which in times past were done with sharp weapons indangering the combaters; but by reason of inconvenience, and murder which grew thereupon, they were forbidden to be so used in that manner, as after shall appear.

For in the exercises of activity, Gilbert Marshall, earl of Pembroke, 28 Henry 3. in a tourney which he attempted at Hereford, without the king's licence, was by an unruly horse cast, and so hurt that immediately he died thereof; thus also Sir Arnold de Montenev was slain by Roger Lewborne in a tourney holden at Walden in the 36 year of king Henry the third.

In the 13th Richard 2. John Hastings, earle of Pembroke, as he practised to learn to just, through mishap was stricken into the privy-parts by Sir John Saint John, which came against him, soe that his inner parts being perished, death presently followed. Therefore in our age, these

combats are exercised by the rebated weapons, with more delight in shew, then danger in acting. Those combats which by degrees concern the publick good, are either publick or private: publick combats are such as when the combat is appointed by publick edict of the magistrates, whereby men prepare themselves to that kind of fight; for without the king's licence it was not permitted to any to take such combats in hand, because it was lawful for them without danger of law following thereof, to kill any man in those combats; wherefore such combats were not allowed but by the king's precept; for if these tournamenting combats were otherwise taken in hand, as they were many times, they were holden a certain kind of rebellion, because under colour of doing feats of arms, they made many assemblies of armed knights and gentlemen to conspire against the king, to revenge some quarrel, or to assist some other faction, whereby they disturbed and endangered the common wealth: but hereof we will speak more in discoursing of private combats. For the confirmation of such kinds of publick combats, as we find many examples, so this one shall stand for all at this present. Richard the first in the sixth year of his reign, by his charter dated the 22d day of August, granted that tourney and tournament should be exercised between Salisbury and Wilton, betwixt Warwyke and Kenelworth, betwixt Barkeley and Muxburgh, and betwixt Blye and Tickhill, for the better training of men of arms in feats of war, that they might attain to be more skillfull in the same when they should come to the tryal of their forces; which tournays were yet so limited, that neither the king's peace should be broken, nor the authority of the justice diminished, nor any damage done to the forrest; and that every earl that should tourney, should give to the king xx marks, every baron x marks, a landed knight iiij marks, and one unlanded knight ij marks; adding further, that no stranger should be admitted to that tourney. Thus much for publick combats of exercise.

Private

Forbiding
of Tourna-
ment.

Private combats of exercise are those which are assumed of private conceit without the authority of the magistrate; as was that of Gilbert Marshall before recited, and of others which attempted the like without the king's licence, when under the colour of tournaments, they called a power, as I before said to revenge some private injury, to maintain the quarrel and factions of some of their complices and friends, to levy war against the king, to put the realm into hurly-burly, to break the king's peace, or to do some other unlawful act; as may be partly proved by the tourney holden at Brackley, and by some at Barkeley in the 32 of Henry 3. where the earl of Gloucester favoured the part of the strangers, whereby they prevailed against his countrymen, and did much hurt to the adverse part. Such kinds of assembly the kings of the realme have always forbidden; for when in the 28th of Henry 3. a great number of lords, knights, and gentlemen were assembled together at Dunstable and Layton, there to have kept a marshall just and triumphant tourney, they had a countermand from the king whereby they were disappointed of their purpose. And in the 30th of Edward 1 as appeareth in the records of the Tower, the king by his writ dated the 16th of July, and by proclamation, forbiddeth jousts, barriers, and other warlike exercises which young lords and gentlemen had appointed for their pastime in divers parts of the realme. Thus much for all kinds of combats concerning the publick good; and so to unjudicial combats which are not taken in hand for the common-wealth sake.

These combats are either for virtue's cause, or for causes alienated from virtue: such as are done for virtue's cause, are such as are done for the obtaining of honest glory without meditation of the death of any party; as be the combats of such as would learn martial feats, and as be the tournaments of princes, earls, barons, and noblemen in our ages, with rebated weapons; though in times past and of late years some of them were in like sort done with the sharp, as I shewed before, and will a little here touch, in two examples of combats performed only for glories

glories cause. In the second year of king Henry the fourth there were two strangers, the one a Frenchman, the other an Italian, requiring to accomplish certain feats of arms against Sir John Cornewayle and James de Artois: their request was granted, and the strangers were put to the worst; whereby Sir John Cornewayle so far forth obtained the king's favour, that he married the king's sister, the widdow of John Holland earl of Huntingdon. In like manner in the 7th year of Edward 4. the bastard of Burgundy coming into England to conclude a marriage between earl Charolus his brother, who was afterwards duke of Burgundy, and Margaret sister to king Edward the 4th, he did for glories sake after the marriage was concluded, challenge the lord Scales, brother to the queen, to fight with him both on horseback and foot; which the lord Scales accepted, and the combat was performed to the honour of the lord Scales. At the same time also, other challenges were done by the English for the same cause.

The combats alienated from virtue are those which are done for vain ostentation; as when one entereth into combat for money, as doth the masters of fence playing their prizes; this did Neylor the fencer, champion of Simon Lowe in the 13th of Elizabeth, for the lands in controversy between him and Parramoure, where Neylor, when the matter was taken up, would needs challenge Thorne the champion of Parramour to fight there within the lists for ostentations cause, and to try what either could do. Further, of this kind are such combats as are done for foolish defence, as they term it, of their honour, when they are affected with verbal injury, as to fight for the lye and such like. For although we should as much defend our credit and good name, as our life and living, yet to do it upon every wronged speech, especially where law or reason may determine, it is mere folly, and not to be permitted. For never, or very seldom would the common-wealth be in quiet, which always, and by all means ought to be preserved, if it should be lawful for men, so often as they be injured by words, to challenge the combat; for so daily murders and

mischiefs would arise thereof, which the quiet of the common-wealth seeketh to avoid. But we will not further meddle with those things, but leave them to men of better discourse and judgement, wherewith we end the first division of combats, since we must again make a second subdivision of them in this sort.

All the former combats are either combats capitulated and drawn into articles, or combats unarticulated, but left to the orders and decrees of the martial law and customs of the country.

The combats capitulated are those wherein are set down, by the consent of both parties, divers articles or conditions concerning the manner of battle; which articles both the parties are strictly bound to perform: for which of them soever shall fail therein, shall be judged to be vanquished; the manner of such articles we will for brevity omit. The combat unarticulated is that which we call combat, *a tout entrance*; wherein we comprehend no other conditions but such as the laws and customs of the nation, with the precepts and decrees set down in the martial and civil laws, have tied them unto.

Touching the formes of combats; they are divers according to the customs of divers countries: for in forecall causes, or in pleas holden in the national and courts of justice in England, the combats differ in form from those of the martial and civil laws of the emperor and of other nations. For the combat permitted in the king's-bench for the trial of capital causes, as felony, murder, theft, and such like, differ from those of the court of the common-pleas in causes real and of mere right, as the legistes term them; the form of which are to be seen in the law books before recited.

Both those forms of judicial combats be again different from that kind of combat which the martial and civil laws allow. Thirdly, the manner of combats here in England of the martial's court, are in many points different from the form of the combats of the civil law, as to the diligent observer may appear in the *Glory of generosity*, written by

by

by Mr. Fern; in the Honour of arms, written by Mr. Thomas Beddingfield, and in the histories of our own nation, and other ancient written forms of combats in French, whereof I could set down the examples remaining with me, but that they would be over tedious for me to write, and you to hear at this time.

To conclude: The last of those things whereof I mean to intreat (for of all other matters belonging to combats directly or indirectly with all circumstances, even to the last note Mr. Ferne in the book before recited in his 10, 11, 12, 13, and 14th motives hath so liberally discoursed, as he seemeth to have left nothing for any other to handle) I say, that considering the many inconveniencies which did grow by combats, tornements, barriers, and such like performed by the sharp, especially of such combats as were judicall, they were and are utterly forbidden by all laws divine, canon, civil, and national, and lastly by decrees of general councils; the just abrogating whereof we could sufficiently prove by many arguments, which I forbear at this time, and will only deliver unto you some few authors condemning combats and tournaments. The first concerning the frustrating of tournaments is that which is recited by Matthew Paris and Hoveden in setting down the counsel of Rome holden at Laterane under Alexander bishop of that see, A. D. 1179, in the time of Henry the Second, where this canon is delivered, reciting the condemnation thereof in the time of his predecessors Innocentius and Eugenius. The words of the counsel, as hath Hoveden, are these, *Felicitis memorie pape Innocentii & Eugenii predecessorum nostrorum vestigiis inherentes, detestabiles nundinos vel ferias quas vulgo torneamenta vocant, in quibus milites ex dicto convenire solent & ad ostentationem virium suorum & audacie congregiuntur, unde mortes hominum & pericula animarum sepe proveniunt, fieri prohebemus. Quod si quis eorum ibi mortuus fuerit quamvis ei penitentia non degetur, ecclesiastica tamen careat sepultura.* This much that counsel. The other authority thereof is the last Counsell of Trent holden in our time; which in the 19th canon of the ninth sessions

under the title *decreta reformatis generalis* doth say, *Quicunque duellum concesserit excommunicetur*, which taking away all grants of combat by way of excommunication of him that granteth them, doth likewise take away all the means to perform the same. For as the law saith, *quum aliquid prohibetur quodam jure, videtur etiam prohibitum omne id per quod pervenitur ad illud*. And so I conclude this tedious discourse.

N° XXXVI.

Of the same.

By ANONYMOUS.

Libro Genesis.

WE may read of the first unlawfulness to kill any man, and what horrible judgements and punishments came upon Cain for the murder of his brother Abel. Yet many examples have ensued to tolerate some slaughters, as that of Phineas and others; and infinite are those for the allowance of these combats, even in the best and renowned nations, namely amongst the Israelites the peculiar people of God. As for instance, that of David and Goliath: and that desperate encounter of 12 stout men commanded on the part of Moab against 12 of the part of Abner, which killed each the other with their swords at their captains commandment, Libro Regum 2°. cap. 3tio.

Omitting the times of the Assyrians, Persians, and the Greeks, we must restrain our discourse somewhat to the Roman histories of the Horatii and Curiatii Tergemini. Their combat is known to us, and the same thereof hath been so divulged in the time of that monarchy, that the form therein hath been observed and generally practised throughout all their dominions, as accompted most valiant and lawful in cases for trial of truth, right, and honour (now abolished) by the ignorance of the just causes and right proceedinge thereof. For we find examples by good record

record of combats practised before many princes in sundry kingdoms and nations, as also how noble and valiant men were armed with weapons convenient for them, after their use in military profession, with spear and shield, and swords of steel, cutlasses, battle-axes, &c. and how the baser sort of people, after their manner clad in leather, with batts in their hands tipped with horn, and pelts of leather for their shields, fought at oulterance for trial of causes in question for lands. The first I refer to the better and more particular declaration of Mr. Agard out of the Records in the king's majesties Exchequer, tempore Regis Henrici 3. and the other, as to Mr. Holland hath best informed, nothing doubting of the ancient use and manner of combats in England before the time of the conquest, as hath been related. This I noted, that Mr. Holland hath delivered, that the commonlaw did not take notice of that proceeding for combat between the B. of Bath and Wells, &c.

Further I must remember you that Sir William de Grandson, sometime lord of the manors of Dymok and Manchester, and half the lands of Evias, being descended of high parentage, in the time of king H. 3. went with Sir Edward the son to the said king to the wars in Palestine, where being chosen by the prince and army of the Christians to fight a combat with a principal Pagan at Burgh de Ponk, he obtained the victory. It is reported of him how that he brought a piece of the cross, which he gave to the abbey at Dore where he was nobly entombed.

Omitting other histories or tales of combats, I find, that only the Kings of England have by their constables, and the marshal ordered and allowed all combats, and not the common lawyers. This appeareth by the particular articles written in a book which I have, and which doubtless was made in the time of king Edw. 3. wherein is this special title, *Modus faciendi duellum coram rege*; the articles are many and too long to repeat.

Again, I will not particularly mention the acts and combats practised in the time of king Rich. 2. neither the challenges sent and offered by the said king and his three uncles

to fight against the French king and any his three associate princes.

In the time of king Henry the sixth, amongst many like exercises of arms performed by valiant Englishmen, and permitted by those famous princes, the protector of England and the regent of France, I find the feats of arms accomplished by Sir John Chalons, knight, borne in England against Lewes de Beul holding the part of king Charles of France, and which were performed at Tours in Tourrayne before the said king Charles as judge, accompanied with the queen his wife, many notable princes and ladys, archdukes, earls, barons, knights, &c. But the process thereof would be too tedious to enter upon at this time. And as to the others expressed in the calendar of the aforesaid books of combats by Englishmen, I must relinquish them.

Piers de
Massey, the
earl of War-
wick. Lo.
Scales, &c.

I read of one notable case of combat made between two knights, castellanes in Spain, in the time of Alphonso de Castella father to Don Pedro; the one called Ruy Payez de Viedina and the other Pay Rodriguez de Avila, for certain words spoken against the king. Which combat continued three days; and on the third day the king took up the cause and received them both to grace and to their honour. This fact of arms, by the discourse of the history is famously related as a most singular and brave pass of arms.

Two
knights of
Castella.

These examples and proofes cause me to think that these actions of Arms do peculiarly appertain only to princes which have experience in matters of arms and combats between noblemen and gentlemen.

But now that the office of constable and earl marshall have been neglected and unknown, there will not want intruders in other mens faculties.

To conclude therefore, the last example which I find of controversy in challenge of arms is that between Sir James Parker, knight, and Hugh Vaughan, gentleman, huissier to the most prudent prince king Henry 7. wherein the advantage that the said Sir James Parker, knight, would have taken against the said Hugh Vaughan, by reason that he was not a gentleman of name and arms, as he supposed,

doth

doth shew the right, and prove the policy and advantage which the said knight would have had to fight in armour and with swords, &c. against Hugh Vaughan, who not being a gentleman, must have been clad in leather, and fought with his batt without armour or other weapon.

Nº XXXVII.

Of the same.

By Mr. AGARD.

13 Februarii 1600.

BEING restrained in the proposition by this word *lawful*, yet it shall not be amiss that I enlarge my discourse in beginning with unlawful challenges and quarrels, which by our laws, customs, and pleasures of princes have been justly restrained.

First, it is apparent by the same, that not every one that will stand upon his reputation of valour is to be presently admitted to prosecute his revenge by main force and dint of sword. Wherefore, for the avoiding thereof in king Edward the First's time, proclamation was made in the county of Essex in the 29th year of his reign in these words: *Quia dominus rex intellexit quod quidam apud Branketre, &c. et contra inhibitionem regis nuper inde factam justas fecerunt, &c. fac et etiam idem vic. per totam ballivam suam ex parte regis publice proclamari, et firmiter inhiberi ne quis sub forisfactura terrarum et tenementorum et omnium que regi forisfacere poterint, torneare, bordeare, justas facere, aventuras querere, seu alias ad arma ire presumant, sine licentia regis speciali.* The like writs were directed to the sheriffs of Essex, Kent, and Sussex anno 31 of the same king, whereby it appeareth that the king seeing these assemblies of his subjects to make triall of armes, brought this inconvenience, that there grewed thereby particular quarrels and chalenges to the damage and danger of his subjects, did
by

by public proclamation, as well in shires where the same were practised, as also in his court of king's bench, plainly inhibit such dangerous and mutinous assemblies.

Again, the same king, as it appeareth in the pleadings of the king's bench, *term Pasch. anno xxxiiij.* of his reign, not favouring furious challenges, being in Scotland against the Scotts attended by two barons, the one called Nicholas de Segrave, and the other John de Crumbwell; the said Nicholas, upon discord happening betwixt him and the said John, being in the king's army, *maliciose & absque causa movebat discordiam versus predictum Johannem*: which John offered to defend himself according *ut curia consideraverit*, &c. And the king's attorney lieth to his charge, that he the said Nicholas departing from the camp, and leaving the king in peril of his enemies, and contrary to the king's prohibition, challenged the said John to come and defend himself in France before the French king in his court; and therein as much as in him lay subjected the realm of England to the realm of France, and so took his journey to Dover, where being stopped from passage by the king's commandment, he found out another place of passage; but at his return being stayed at Dover by the constable of the castle, he broke from out of ward, and so retired into Northamptonshire, where the sheriff was commanded to take him, and so brought him into parliament and the king's bench, to be arraigned before the lords; where the said Nicholas confessing his fault, and submitting himself to the king's pleasure: *de alto et basso*, judgment is given on him in these words: *Et super hoc dominus rex volens habere advisamentum comitum, baronum, magnatum et aliorum de consilio suo injunxit eisdem in homagio fidelitate et ligeancia quibus ei tenetur, quod ipsi fideliter consulerunt qualis pena pro tali facto sic cognito fuerit infligenda. Qui omnes habito super hoc consilio, &c. dicunt quod hujusmodi factum meretur penam amissionis vite.* Whereupon he is committed to the Tower, and after delivered upon sureties. And lastly the king pardoneth him. Whereby it appeareth that his manner of challenge was altogether unlawful, in that he would make his

own revenge. The like happened *anno xx^o. dicti regis Ter. Hillar.* and was treated on in parliament. That controversy happening in South Wales and Herefordshire betwixt the earl of Hereford and Essex, and the earl of Gloucester and Hertford, the said earls fell to it with downright blows, and met *cum vexillis displicatis*, killing and burning houses and churches. But the king called them to accompt for the same; committed them both to the custody of the marshall, fined them both at ^MX marks a piece, and deprived them both, of the liberties of their lands, and committed the same to the regard and custody of Roger Burghill; and lastly commanded that this judgment should be inrolled in the King's Bench, Common Pleas, and Exchequer; in all which places I myself have seen the same.

Hence it appeareth that the deciding of all quarrels betwixt party and party tending to the preserving of peace, remaineth wholly in the prince. And therefore the kings in former ages in all their grants made to abbeyes and borough towns made this exception, *Salvo nobis iudicio de vita et membris*. For if every man should be his own revenger it were not possible that society should hold among men; but all would be full of murders, maims, and confusion: and therefore our laws imitate that which is said in the first book of the Kings, of Joab who murdered two noble-men, Abner and Amasa; that he took his dagger in his hand and stabbed them. So in all our indictments of manslaughter and murder, I speak of old time, were used these words: *Et cum una Hachia vel uno gladio, vel uno cultello vocat. a dagger, quem in manibus suis tenuit, percussit J. H. unde statim obiit.* Whereby it is concluded that the murderer or man-killer took into his own hand the sword of justice out of the magistrates hand, and wrought his own revenge. A thing most odious in the sight of God, who saith, *michi vindictam & ego retribuam.*

Truely our laws do utterly forbid such challenges and trials by sword to be had upon every light occasion or complaint, indictment for trespasses, or otherwise. And therein I find a notable precedent in the eighth year of king

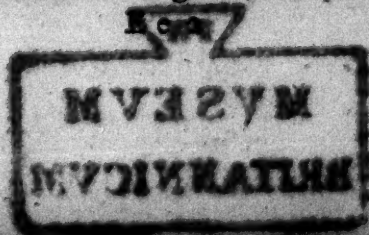
Of the Antiquity, Use, and Ceremony

Richard the Second, where one called Edward Dalingruge, a knight in Suffex, being about to be indicted for sundry misdemeanours by him committed, and having the matters given in evidence against him before the justices by one John Sencler, knight, answered, *Quod materia illa non continebant veritatem. Et protinus projecit Chirothecam suam coram iusticiariis et petiit admitti ad dirationandum materias predictas versus predictum Johannem per duellum. Et sic contra legem terre coram prefatis iusticiariis vadant inde duellum.* But what became of this his unlawful fact? forsooth he is committed to ward to the sherriff, there to remain *quousque satisfecerit domino regi pro contemptibus predictis.*

But leaving these unlawful challenges and combats to them which desire to have the blessing of their gaffather Cain, *fugitive and vagabond shalt thou be*, I will come to lawful combats which by the laws of all nations, and here with us in England, are and have been always reputed lawful, and allowable, and which I will divide in two sorts, martial and politick.

For martial, I observe one law specially set down: *Si quis propter formidinem fugiens, dominum vel socium suum destituerit, sive navali bello sive terrestri, quicquid possidet cum propria vita amittat*; that law continued, and yet doth abide in force in martial affairs, as was to be seen by the combat in king Henry the Third's time that passed betwixt Henry of Essex and Robert Montford, who charged Henry of Essex, that in a battle fought by the king against the Welch men, the said Henry carrying the king's standard, cast the same from him and fled, and left the king in peril of his enemies, and after came back again, seeing the enemies repulsed, and took up the standard again. Which the said Essex denying, the said Montfouard said he would prove the same by combat; which the king granted, and so came to Reading where the said combat was tried betwixt them, and Mountford overcoming Essex, he was thrust into the abbey there, as some say, and made a monk. So as that was a martial combat proceeding upon terms and acts of martial honour. A like combat happened at Haddington in king Edward the Fourth's time
betwixt

betwixt an Englishman and a Scottishman. The Scot speaking disloyal words against king Edward charged the Englishman therewith, saying that he heard him speak those words. The Englishman stood upon his defence, and challenged the Scot. And because no proof could be made of either side, Sir James Wilford, then general, admitted the combat, which was done in this manner: In the midst of the market place were made the lists with rails, some 40 feet long and 30 feet broad; and both of them were brought in by gentlemen. Their weapons being tried and found equal, they both kneeled down upon their knees and took an oath of their rightful cause. Proclamation was then made that no man should enter the lists upon pain of death to aid either of them; and declaration made to the combatants, that if either of them recoiled so far forth as to touch the lists, the same should die the death. Then they joined the battle, where the Englishman conquered, and made the Scot confess his treason; whereupon he was presently hanged in the place. The place where the same was done was shewed me with other circumstances by a gentleman who then served there under Sir James, when I was in Scotland about 34 years past. There are admitted in martial affairs mutual challenges of soldiers, enemies one to another. As to break a lance, to tosse or push a pike, to change a bullet, to try a sword, and such like, as happened betwixt Joab and Abner, where Abner said to Joab, let the young men rise and play before us, where 12 against 12 meeting together, every one killed his enemy, and so they fell to the ground all on both sides. But leaving the combat of Cornwall whereby the shire took the name; and that of Edmund Ironside with Canute the Dane; and that of Henry Bullinbroke with Mowbray; all which being martial are mentioned in our printed histories, I will make mention of one only treated on in the King's Bench, and in parliament in king Edward the First's time, anno 22^{de}, which began thus. A nobleman of England, named William de Vescy, serving in Ireland, did charge John Fitz Thomas, a nobleman of that kingdom, that he should report



to the king and council, that the said William should speak to him defamatory words against the king's person; and practised with him to combine to have taken his part against the king. Whereupon the said John was produced before Gilbert of Clare Duke of Gloucester, then deputy there, and others of the council, to know what he could alledge against the said William, which John exhibited his words of accusation in a schedule in French: *Et predictus Wilhelmus audito tenore scedule predictæ dementitus est predictum Johannem dicendo, mentitus es tanquam falsus & proditor; et denegavit omnia sibi impartita.* And then offered to prove and defend himself by his body against the said John, *et tradidit vadium in manum justiciarii qui illud admisit. Et predictus Johannes advocavit omnia, &c. et tradidit vadium et dementitus est similiter dictum Wilhelmu.* And so a day was given for the combat, which was adjourned from out of Ireland to the King's Bench, *coram ipso domino rege apud Westm. ubi predictus Wilhelmus venit die constituto. Eques armatus armis militaribus videlicet cum dextrario cooporto, lancea, scuto, cultello lorica, et cum aliis armis militaribus, & opposuit se versus predictum Johannem paratum se defendere sicut curia consideraverit, de omnibus ei per predictum Johannem impositis. Et predictus Johannes solempniter vocatus non venit. Et predictus Wilhelmus supplicavit quod se plura arma haberet quam competeret quod illa posset dimittere per licentiam curie, et si pauciora haberet, quod plura haberi posset.*

But the king in the parliament anno xxiii^o, did give judgment in this matter, declaring the unlawful course of proceeding in this combat, and shewed the errors in the same, and saveth the honour of them both. And thus much for martial combats.

Now as to such combats as are mentioned in our lawful course, I find there are two especially. The one in a writ of right, where the demander of the land produceth his champion, *et offert dirationare per corpus T. Et liberi hominis sui, ut ille cui pater suus dixit, &c. vel ut ille qui hoc ipsum cognoscit: vel ille qui audivit H. F. hoc idem dicentem.* So

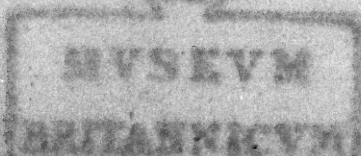


as the champion must be such a one as knoweth the matter. The other is in appeal of murder or felony. The manner of it is set down in the laws of Normandy expressly, from which it seemeth that our laws have taken their direction and fashion, of all compliments to the same belonging. And in the 65th chapter treating of murder it is thus set down. Richard complaineth against Thomas, which feloniously murdered his father, and is ready to prove the same, and to shew it any time of the day, if Thomas deny the same, and offer his gage to defend it. Then his gage is first to be taken, and after that the gage of the appellor; and either of them must put in sureties to observe the law. It is at the choice of the justices whether to commit them to prison, or take bail of them for their appearance at the day, either alive or dead, ready appointed before the justices to wage battle in this sort; immediately after noon the champions must offer themselves apparellled in their doublets and coats, having their targets and their staves tipped with horn, armed as they ought to be, and their clothes of cloth, leather, or linen. Their targets, staves, and armour for their legs must be of none other than wood or leather, or the one of them, and they must have none other weapons than a target and a staff. Both of them must be rounded on their heads above the ears. They may be anointed if they will. When they appear thus appointed, then the words of the record of the battle ought to be read, which not being well recorded according to the challenge and waging of the battle, they are to be amended. And then the champions are to be brought to the field with four knights, which shall have charge of the lists and direction of the place of combat. Then Proclamation shall be made, that none upon peril of life be so bold as to do any hurt to either of the combatants either in word or deed. Then the champions are brought forth, and on their knees take their oath upon the words of the appeal, holding each other by the hands: the appellor on the right hand, and the defendant on the left. Then is demanded what is their names, and whether they believe in the Father, Son, and Holy Ghost? And whether they believe as the holy church

church doth? And when they have answered, yea, the the defender shall swear in this manner, *Hark, thou fellow, which I hold by the left hand, which art called Thomas by name, that I have not murdered nor killed thy father; so help me God.* Then the other sweareth the contrary, and addeth further, that he in so swearing is perjured. Then they swear that they have not used any witchcraft or forceries. Then they deliver to them their staffs and targets, and the four knights shall stand betwixt them, until they have heard what they have to do, and until proclamation be made. Then the four knights withdraw themselves unto the four corners of the field. And it is said, that if the defendant can save himself until the stars appear in the sky, he shall then be adjudged to be vainqueror.

Combat in
a writ of
right.

I never read the manner of any appeal or combat in any record, but Vesceyes and Fitz Thomas, and this law of Normandy, although I have read of sundry in writs of right, where it hath been shewed that *duellum inter eos armatum fuit et percussum et serviens predicti abbatis devictus et interfectus.* This is in Mich. anno 15 Edw. I. in banco, in com. Suff. Rot. 8. in a writ of right betwixt the champions of Westa de Cokesende, and the abbot of St. Edmondsbury. And thus much for this question.



N^o XXXVIII.

DUELLO FOILED,

THE WHOLE PROCEEDINGS

The orderly disposing of a Design for single
Fight between Two Valiant Gentlemen;

BY OCCASION WHEREOF,

The Unlawfulness and Wickedness of a *Duello* is
preparatively disputed according to the Rules of
Honor and right Reason;

By MR. EDWARD COOK;

To

Most honourable my very good Lord,

REASONS moving me to write this thing, which handleth not the whole matter of a *duello*, but only the main point concerning the quality thereof; what other, or so worthy can there be then the pity that so many hopeful and principal gentlemen are cast away in these wicked single fights? To which desperate evil, as a court of honour (where the earl marshal is the proper magistrate) may give greater redress than any penal laws, which are easily set at nought where fear of death is nothing worth, to withhold from actions of blood and fury, so conscience and right reason working in minds not already possessed with false opinions, may operate most of all. The reasons why I present them (drops of a full shower) to your lordship are the tender of my duty and devoted affections, and knowledge I have, that for the common good (herein sought) your lordship will give them good and honourable acceptance. Most humbly resting always

At your lordships service.

DUELLO

DUELLOFOILED, &c.

THE two parties between whom this single fight was appointed, were a knight and a gentleman of special worth, both known to myself; but the knight very inwardly. From him receiving a few lines, they gave me occasion to bethink of a speedy course. My answer was as followeth:

To my honoured good friend Sir PERCY O.

YOU must fight, for your honour is engaged, which you cannot otherwise in your case uphold but with your sword: you must fight, for you are wronged, and the world takes knowledge of it, and as a gentleman you cannot neglect yourself in that respect: you must fight, that is, you must kill or be killed, or at leastwise make it understood, that you dare put it to that point."

Thus you write, and add, that your enemy is a gentleman; therefore the contention cannot be dishonourable.

Sir, you have me no cold, or slow feeler of your wrongs, who am ready to live or die with you in any worthy action: evident it is that you have resolved against death itself; but therein I hope not against reason also, for *you must fight*. The necessity then makes it just, and your will doth well to concur with that which you cannot fly from. I am none of them that will persuade contrary to your honour. This I say, that your so noble and hot resolution I should the rather admire, if it did not proceed from necessity, which abates of the glory. The necessity appears in that you say *you must fight*; yet do I not see that necessity, and therefore the glory may stand entire. But *you must fight*, and therefore words are to little purpose; neither can a mind taken up with such a determination have leisure to think of any thing farther than only thus, how to come home a conqueror. I will not therefore return you words lest I might advantage your adversary by retarding your fury, upon whom I would have you pour out your whole displeasure,

which words might weaken in you; for, seeing *you must fight*, I would not cool, and so in part disarm you, (only that you may fight the more assuredly and with less distraction) settle your worldly estate and make your will; for that purpose I will stay within all this day, and your day is not till to-morrow; and as I would not have you a coward, so not to do things with sound advice, is to make it thought that your enemy hath power to fright you from yourself by perturbing you.

Fare you well.

This letter thus dispatched with all speed to draw thereby his repair unto me (both for that the air between, and other familiar occurrents might somewhat serve to clear his passion, and for that I might have him the more fully to deal upon) my next work was to send away this other which follows:

To my very loving friend Mr. _____

S I R,

I HEAR that there is a field designed between two of our very dear friends, Sir Peter O. . . and Mr. Anthony D. . . they are both (we know) of a fierce forwardness; deal you with Mr. Anthony D. . . and let us find out the wrong, take a scantling of the quantity, apportion due satisfaction that both their honours saved, we may preserve to God, our prince, and country, the souls and bodies of two such worthy gentlemen.

Fare you well.

This my letter had a present answer thus:

To my very loving friend Mr. _____

S I R,

YOUR tidings are too true; for since the receipt of your lines I have heard it from two several persons, men of quality. The censors of single fights have it up in table talk. The remedy must be speedy. All business set apart, I will

dedicate

The orderly Dissolving of single Fight.

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dedicate this day to so good a work, and find out Mr. Anthony D. . . . These wicked *Duallos* are the bane of many a worthy man; handle you the knight, and I will deal with the other gentleman.

Fare you well.

This answer of Mr. . . . came no sooner to my hands, but I perceived hard at hand Sir Peter coming, therefore reading it hastily over I sent the footman away with instructions by word of mouth, to wish his master to do as he had written, and concealing all suspicion of that I went about, I gave myself wholly to the entertainment and handling the knight, whose words and mine for avoiding of too often putting in (quoth I, and quoth he) I will here set down in dialogue.

Knight. By your leave, dear friend, for your letter I thank you; come let us dispatch the will, for that is my business.

Gentleman. Worthy Sir Peter, you are most heartily welcome, and I am ready. To ask after the cause of your quarrel (which I suppose to be on your part just) were to trifle time. Let us dispatch what you come for.

Knight. I have here with mine own hand set down the brief points of my will, where I will use your judgment; and then here is a fellow shall engross it in form with speed, that I may sign it.

Gent. Though I doubt not but that you shall return out of the field with honour, yet this is providence, and seeing you are pleased to confer with me about your last cares, let me see the brief notes. . . . All is as well as can be. Let the fellow draw and engross it in form. But what shall we do the while, for you will not away till it be done?

Knight. Let us into the garden, if you will.

Gent. Content; but are you agreed whom to take with you into the field?

Knight. Whom but yourself?

Duello failed: Or,

Gent. Very willingly! But then first it is fit that you should give me leave to confer with you a little, not concerning the quarrel (for that I am still resolved is on your part just) but of this manner of fight which is called *duello*, that so I may bear you company with a safe conscience.

Knight. God forbid else.

Gent. God forbid, do you say? I am glad to hear that, though I do not therein infer you to be negligent of God's displeasure. But (as I wrote) I see not that necessity by occasion whereof you say *you must fight*.

Knight. Not you have heard my reasons: how can I possibly then avoid?

Gent. I do not say you can, because you say you cannot. Nevertheless I should take that to be a right necessity, if your adversary had you before him at the sword's point; if he assailed you in a streight; if he pressed you with peril of your life. Here is no such thing, but a design in cold blood to kill one the other, which though it may happen otherwise, yet may it happen so: and in contingencies of this kind it is best to conclude the worst. Neither herein is there any thing different from the modern form of *duello*, which I cannot but hold unlawful.

Knight. If any private fight be lawful, certainly in my case it is, and *vim vi repellere* is *ius naturalis*, whether that violence be offered to a man's person or fame, or otherwise howsoever.

Gent. My opinion concerning *duello* is hitherto as I have told you, and it being true (as it is) that *accessorium sequitur naturam sui principalis*, then if I go with you on this quarrel (which I am most ready to do, my conscience first satisfied) you must clear my just doubts, who shall be as deep in to all constructions as yourself.

Knight. If I do not that, I do ill.

Gent. Should I tell you what I have heard, that the learned of all sorts hold in this point, you were never able to endure against such a stream of authorities as do wholly condemn it for wicked and contrary to Christianity; but I

will

will only go to the reason of the thing itself, and to common reason, seeking from thence such a satisfaction as is fit for him to receive, who for your love is so deeply to engage himself.

Knight. Say on.

Gent. Honour is the chief common place from whence you draw your defence of single private battles or fights, and for preservation of that honour you do it. Let honour now be what divine thing you will (as I cannot think it to be more than a fair renown or name gotten in regard of honourable parts) and let it be never so worthy for which a man would spend his life, I only desire to learn how the *duello* can (I will not say) be *legitimum* but *idoneum medium* to preserve it. YOU ARE WRONGED, YOUR ADVERSARY IS A GENTLEMAN, AND YOU MUST FIGHT. The end of your fight then is to right yourself and to preserve your honour. If by fighting you be not righted, then both do you fail of your end and wrong yourself. Unless the truth appear you cannot be righted. If then this be not a fit mean to make the truth appear, you are not righted; justice delights in truth, and justice is a blinded goddess; but while you put it upon the blind, beware you refer not your cause to fortune, not to justice. Search this matter to the quick. Mark now; as a means to right my wrong, I propound myself to deal with my sword against the supposed wrong-doer; if this be a means, can I deny it to be very unsure and fallible? I may fall under my enemy's weapon for tempting God, and then instead of righting myself I give the world cause to judge that I was in the wrong; so to the loss of life I add the suspicion of a deserved death. Say, I kill mine adversary (wherein I can scarce tell whether I am more fortunate than if I myself had been killed) have I presently made it clear thereby that he was in the wrong? all that can be concluded from thence is, that I did put my thrusts home; that it was my fortune, as they call it; that it was manfully done; and so forth. How is the *duello* now a fit means to right myself? is not every thing in as great uncertainty as ever it was? doth any
man

man think the slain more nocent, or myself the more innocent? I conclude then that *this kind of trial by the sword conduceth not to the pretended ends of righting yourself or preserving your honour.*

Knight. But my conscience knows he did me wrong, and by fight I satisfy my conscience.

Gent. My displeasure, anger, or other corrupt human affection I may perhaps, but not my conscience; for how is that more satisfied by adventuring my life than it was in understanding of the thing? If my conscience be not satisfied before I come to draw my sword, upon deliberation how can I be thought to have a conscience? These courtes seem to burthen, not ease the soul, as them by which she is made to know the less by how much the more it is troubled with passion. Never let me say then that my conscience can thus be satisfied, but dangerously charged rather.

Knight. The world will think I dare not fight; and by much bearing I shall but invite abuses: he that wrongs me in my honour shall without peradventure know that I carry not a sword of lath but of bright metal, and revenge is necessary to keep the world in good order; for albeit many pairs of gallant gentlemen miscarry in this sharp justice, yet the streets are far more quiet, and few are so hardy (as heretofore in sword and buckler times) to offer offences.

Gent. Upon the abuse first offered, while as yet the blood is hot through wrath, always in these actions predominant, and which is a capital sin, to let the stuff of the sword appear is not so culpable, for that men at such times are not themselves through passion. But that, and all other reasons put together (for any thing that ever as yet I could learn) are not a sufficient ground for a Christian gentleman to set his own or another man's life at naught. I will break this sheaf of arguments by pulling them in pieces one by one. You say the world shall know that you are no coward: it may know so much already, your friends do; but who knows that better than yourself? Or who needs to know it more? and what if the world know it not? is the world's conceit

conceit so necessary a part of life that you can think it worth your life? You may say it makes for your honour that the world should know so much: if honour consists in the world's opinion, not in the quality of the merit, what is the world that I should for it despise so many main points, as I will hereafter show are for that respect despised? But what if it make not so for your honour? For what, if to fight in this kind be not an act of fortitude, is not the glory you propound to yourself not only false but pernicious also? Let us look upon the thing itself. Two gentlemen meet in a desolate place, with each a witness, or perhaps none; there the one kills the other. Now the world knows these were no cowards: what then? Marie, the world knows these were no cowards. O wretched circle of illusion! First, if none see the battle, who knows but that the other was slain (as Colbye slew L. Bourk) by treason? in stooping to unbuckle a spur, or by misadventure, as in stumbling, and that too perhaps while he pursueth his enemy running away, or in time of truce, and breathing and advantage cruelly taken. If two friends saw the bloody trial the report will seem partial, and if it do not seem, yet only a few shall know it, and for a very short time. Who are then the world? or to which sort of men in the world hath this sacrifice been made? To some few young and ill-instructed gallants, who neither know others, nor themselves. The religious, the grave, the wise, the truly valiant are no part of the world in this case, for of that sort were all they that made laws against these homicides and murders; and yet the world shall know these are no cowards. How light and empty is he whom such a conceit can carry to destruction? shall the world hereby know that they are no cowards? The evil world is a deceiver and hath been so from the beginning; the judgment thereof is worth nothing; but say it were: the world knows of a fight, but doth it know of all the rest? Doth it know but that the parties were in wine at that instant? Where is then the glory of manhood? lamentable frauds of the devil. But say, the world knows thus much; can they who fought make it at the same time understood, that they

they regarded not the world more than God? Is it less infamous to be supposed an atheist than a coward? Or is it better to be thought daring to fight, than desirous to die well? But in making the world umpire, who can marvel that God should not be thought upon? To make it your end that men should be deterred from abuses, knowing your humour not to bear them, is as strange, considering you purchase this supposed security with perhaps the loss of life, as if I would give away my life to prevent the fear of a cut. So that while I contend to be safe, I make my hazard greater than my harm could be when it should happen. Again, can I by one example of revenge in this kind make the world take knowledge to beware how it wrongs me? Or do I not animate the desperate to seek glory upon me? And while I would give experiments that I am not to be wronged or tempted with abuses, do I not either perish in exhibiting them, or draw dangers upon myself by kindling malice or ambition in others? I provide not then for my quiet or security; but I do conspire against it. The judgment of the world in the good and honourable parts thereof, is not to be despised; but how that should be led to believe well in this case, I see not. For if it be not an act of virtue they cannot approve it. An act of virtue it is not, for if of any, it is of fortitude, and of fortitude it is not: for that it seeks not justice justly, nor *bonum bene*; because no man ought to be a judge and witness in his own case; and single battle is neither a lawful nor fit mean to try by. I argue from fortitude to justice, for that each virtue partakes of other: and if it be an act against justice, or but a vitiating error about the thing proceeded in, it is against fortitude also: finally, it cannot be an act of fortitude, for that is an act of wrath, revenge, and fury, which are vices and not virtues; it is an act of vain-glory and self-love, and for our own sakes we do it, not for justice, which both publick and private is hereby violated.

Knight. Then belike we should bear abuses and indignities, which are often more intolerable where the law affords

fords no action than where it doth ; or should always be upon arbitrations of differences, or in suits of law. But that we cannot be, for the ordinary courts are not capable of quarrels among the noble, whose proper court is that of the earl marshal of England, the want whereof is a cause, I doubt not, why many great evils and heart-burnings continue unredressed ; for gentlemen then might have their wrongs and quarrels rightly righted.

Gent. That may be so. But to answer you to the purpose, I say that what you speak of abuses, of arbitrations, or suits, are all of them urged out of a supposition of inconveniencies likely to follow, if *Duello* were not, and yet the same (though *duello* do what it can) do notwithstanding abound ; therefore they are nothing to the state of the present question, or to the clearing of *Duello* from the taint of being wicked and unlawful ; and if the comparisons be of the harms which rise from the use or discontinuance thereof, I can scarce think that those which may come by the discontinuance are fit to be called inconveniencies, in regard of those other which do certainly spring from the use.

The common place of bearing or not bearing injuries or disgraces is very large ; the law of flesh and blood saith, we should not bear, but revenge them, and in that law your *Duello* is founded. I will not in present be too severe, or (so to say) too much Christian in this point. Admit then that it is of counsel to forgive injuries, as well for the pain as fault, and not of precept ; nothing makes for *Duello*. We need not bear abuses and indignities, neither for all that fight in cold blood, or at all. We all of us are lovers of ourselves, and may think wrong offered when none is ; grant it be, the *Duello* is no fit mean of righting it. That being so, to find out the fit mean is of another question, in the mean time the *Duello* is wicked and unlawful. What you infer of keeping the world in good order by revenges (meaning by revenges such as are lawful and orderly) and of the decrease of abuses in conversation by the terror of so speeding and short a way as the sword's point, may be granted without the least advantage or credit to the *Duello*.

Enjoy we the benefit of that common awe, and rather live by such examples than make them; wisdom draws sovereign preservatives out of folly, and it is the sublimity of reason to beware with the least peril or charge to ourselves.

Knight. By our Lord, I may spare the making of a will for any business of danger now in hand, if I hearken but a while longer to you: but I abhor not from knowledge, forsomuch as God hath give an human shape, and reason to guide it, precipitation is for beasts, not for men. Therefore in the most serious consultation (and perhaps the last which ever I shall make) I am not, I thank God so shut up against discretion and right duty, as not to examine the grounds of conscience: for, if *Duello* (contrary to the vulgar opinion of the noble) be not lawful, or at leastwise not unlawful, I had yet much rather choose dishonor then damnation.

Gent. You say well, and I think you were better: yet you shall not trespass against your honor, for preservation whereof good ways may be found out, yourself preserve yourself, make a friend of an enemy, obtain satisfaction competent, and in all points perform the duty of a wise and valiant gentleman: for, as for your fear to be spotted with the note of fearfulness and consequently of incapability to be honest, is most vain, seeing your abstinence springs from the fear of God, and not of your enemy: and then shall you declare your valour, when you dare, for keeping your soul in obedience to the will of God, set light by that which is called the world. If any one should be foolishly thereby encouraged to do wrong, who can forbid a man of arms to keep his way with his sword; impeach him who so lists.

Knight. Well, but let us hear in a few words more, why *Duello* is so unlawful.

Gent. I will come to your desire by the shortest way of satisfaction. Let the learned tell you; that what the Greeks call *Monomachia*, the Latins *Singulare certamen* and *Duellum*; that is (saith one) *Duorum bellum*, whether men or sides, and the Italians out of the Latin *Duello*, we the

English call *Single fight* : for, by the French word *Combat*, we commonly understand a battle between two, where appointed magistrates look on, and is of many sorts. First, where it is between two publick enemies, as of * David and Goliath, † the Horatii and Curiatii, king Edmund and king Knute here in England. Secondly, where (according to martial law) the proper magistrate permits two subjects to decide by force of arms, an untestifiable controversy, as in the case of the dukes of Hereford and Norfolk, though it came not to trial ; or as in writs of right. Thirdly, where for the honor of arms only, and the glory of chivalry, two are publicly singled before peculiar judges. Fourthly, (which is too base to be thought of among gentlemen) the matches, or pairs of gladiators in Rome ; and whatsoever other sorts else they think too good to add to these, which you (I see) are not patient of in present, because they are not that of ours. Meeting then upon private appointment of weapon, time, and place, between private men for private quarrels, by occasion whereof the life of man may be lost, is that fight which you call *Duello*, and I *unlawful*. To prove that, I look not upon the maxims which the commonwealth take by these single battles, and bloody performances ; nor upon the terror of conscience inseparable from the killer ; nor his fear and worthiness to die a shameful death ; nor the infelicity of such blood-shedders, both in themselves and their posterity ; but consider it in itself. To withstand force by force was ever lawful ; be it so. I am assailed by mine enemy ; who forbids me to resist ? but to consent unto a time and place, wherein only more safely to kill one the other, is not (according to the law of nature) to withstand force by force, but to offer force to nature ; in the *Duello* it is so. Those grudges are deadly, which cannot be determined but with effusion of blood : in such grudges what wants there to the height of malice ? the gloss and colour of honor set thereupon is but adulterine ; the *Duello* then being a solemn received way whereby to execute that

* Regum. cap. xvii. Livius. Polyd. Virg. lib. 7. † Stowe in R. 1. severa kinds of Duellös

passion, or pravity, who can venture himself therein without the contempt of God and his own salvation? it is not a glory which can be gotten by survivorship in these trials.

First, For that one Christian privately kills the other, which by the law of arms affords not any note of honor.

Secondly, For that the quarrels in these fights determined, do commonly never bear any proportion with the loss of life, but are moved (by the devil's subtilty) oftentimes upon such points as for which a man would be loath to kill a beast.

Thirdly, For that there is no case, wherein one private man may of his own will kill another, unless it be only in natural defence of ourselves; and the foundations of glory are justice and prudence, as iniquity and folly are of dishonor. So let it be never so just that another should do me right, yet is there no justice for me to be mine own taker; for it can hold no proportion; there will be too much on too little: * and that of the Hebrews to Moses may ever be justly asked, *Quis te constituit principem ac judicem?* Nor is it prudence for the satisfaction of an humor, to put myself in danger to leese myself; for if the venture (that is mine own life) be far more in value than the hoped return (that is the revenge of a wrong done) how can I be said to have cast up according to the rules of prudence, one thing with another, before I enter into action? for even then I am a loser, if but in my quiet, and having what I ought to get, I lose the more. I say not this, for that I would have any honourable man weigh this temporal life above his good name (that is his honor) which no man (as I have proved) can (in this case) preserve by killing another; but when it come to such a point as in which he must either choose to be dishonest, as to betray his country or die, then to love life above honor is an act of extreme timidity and baseness. You will urge that though thus the *Duello* seem to be inglorious, yet it is but inglorious, not unlawful. It is not unlawful because it is inglorious, but in seeking glory where none is to be found: as folly is committed, so

* Exod. cap. ii. 11. 14.

the subject of *Duello* being only the unwarrantable killing of another (an act full of brute fury and impiety) it altogether becomes unlawful, and in saying that, there is no glory in this kind to be gotten; I do not say but that dishonor follows. That therefore which is against law is unlawful, and then not only law, but all laws are against *Duello*; yourself a man of discourse, had rather hear the reason of laws than know the letter of the law, because the reason satisfies the understanding, but the law exacteth obedience without giving the reason. Yet it is first fit for you to know that all weighty authorities are against it. In God's law it is written, *Non occides*; but notwithstanding this commandment, even Moses made it in many cases lawful to kill, most true and most just; for that ever was, and now is an immutable decree in the law of nature, to preserve the good by rooting out the evil. So malefactors worthily suffer death, but killing in the *Duello* is not such; and in private homicides no case is excepted in the Mosaical law, as unworthy of death, where there was either * a will to kill, † or hatred corrupting the fact. The survivor therefore in *Duello* should have had no sanctuary, nor privilege thereof in any of the cities of refuge, but have been drawn ‡ even from the altar itself to execution. In the evangelical law, you know that the sin of murder, being breach of charity in the highest degree, is not lessened but aggravated; and this for the general state of the sin in the law of God. The laws of men, all of them are against *Duello* and private killings, which they diversely censure and punish; ask canonists, casuists, civilians, common lawyers if they do not. Christian burial by the canons of the church is denied to both parties, nor but with special reason; for (they dying in an act of malice, and oftentime in an instant, without any the least time to repent) it is to be presumed that they died as well impenitent as excommunicated. Casuists range it with one consent among the most capital sins under the title of homicide: Civilians (interpreters of the law of honor and arms) are not friends unto it, with whom if it

* Exod. cap. xxi. 13. † Deut. cap. xix. 6. ‡ Exod. cap. xxi. 13.

be not lawful to kill an highway thief, * *nisi si aliter periculum effugere non potest*, what may be their judgment of Killers in *Duello*, wherein they do of purpose meet? Common law (the antient and deep law of England) makes it impardonable felony, as wilful murder, and pains the survivor with loss of goods, lands, and life. And wherefore all this, if private single fight be not to the soul of man pernicious in the violent breach of charity, and to common society pernicious by taking the office of publick justice out of the hands of the magistrate, in constituting ourselves our own judges and revengers, filling the land thereby with sudden miseries and mischiefs, widows, orphans, feuds, partialities, sutes, poursutes, and the like? But I will fetch the reason of law a little higher than from consideration of evils which follow the fact.

Knight. Let me hear the reason, for that is the soul of the law.

Gent. The church and commonweal have their several interests in every subject, who therefore cannot dispose of himself to his final hurt but with wrong to them.

The church claims, and hath a care of the soul, the commonweal of the body; and soul and body are the whole man; he is a member of Christ's militant body, and of the body politick; both parents, the church and country are sharers, and with them natural fathers, mothers, wives, children, kinsfolk, friends, followers. These and more have right in every subject, and are as it were so many chains, and bonds reaching unto single fighters, which nothing ought to dissolve but a lawful or natural death. God the creator having given to man a soul immortal, and a nature sociable, to the intent that himself might have the whole glory of their joint and several duties, as the end to which all other respects are but subservient, hath withall infused reason, that every one in particular, and all in general, might in peace aspire to that supereminent end of our creation: so the relation and reason of commanding and obeying is *juris natura*, and that (for preservation of the

* Instit. lib. 4. cap. 3. de lege Aquilia, sect. 1.

whole) is it, which, sensible of the least part of herself, doth will that for the good of all, every one should be secure; for if every one may not be, all are in danger. Because as magnitude consists of parts, so multitude consists of unities. From such necessary considerations as these have all laws against private hostilities and homicides proceeded, lest so many sacred, natural, and civil obligations, tending to preserve the society of man in peace, might be in vain; and if that which is called honor may consist, and be with the contempt and wilful breach of all these bonds, or if any thing be higher than God and nature, to which that false honor can relate, then may I yield your *Duello* to be lawful, the object whereof being revenge, and the subject blood and murder, doth at one cut (like Alexander's sword) dissolve these more than Gordian knots of awe and duty. The laws therefore are grounded upon honor and right reason, and for that cause *Duello* is not; in which the soul is cast away by wilfully dying in heinous sin, and the body is lost to all services by a dishonorable end, all parts being defrauded of those offices, which in time they were to have yielded, whereof the account cannot be easy. For if in the * *Cæsarean law* there shall be an estimation made in case where a servant is slain, what loss his lord is at, not only in the body of that servant so slain, or his work within the year, but of that also which his lord might casually have gained; who can set a value upon the loss of a young and hopeful gentleman, in whom so many had right? or at what sum might the good which he might have done be prized?

Knight. These things are many and weighty I confess: but who is so heathenish as not to pray to God before he fights, so to provide for his immortal part? the rest, as being all without us, are not to be stood upon by him that resolutely leaves the world, which must however be one day left behind, with what else is dearest therein.

Gent. I hear you: but of what force is that prayer which is not made in charity? Cain's sacrifice was as acceptable

* *Instit. 1. de lege Aquilia, sect. illud non, sect. 10.*

Prayer before fight

as such a prayer; what is prayer, if God can be thought to hearken then? Or what can we think of God? Or how should God be willing to pardon me who have no pity on another? Myself make an example against myself, and mine own fact pleads against mine own suit. It is not prayer then, but an acknowledgment that I do amiss and yet persist therein, which makes me inexcusable; it is not prayer, it is only an habit of saying, Lord, Lord, with the lips, which the heart possesseth with outrage, and cruelty never doth think upon. I come to prey upon my christian brother, not to pray like a christian. In an heathenish act what can prayer work good, but only by the operation of grace, the leaving of that act? Then it is plain we believe as we speak, when we cease to do that which none can do, and pray as they ought; that prayer is well made which works that effect: If I leave the thing I am sure I believe aright. O it is a most fearful thing to perish in the trust of such a prayer, so reeds may support a falling man, and quicksands give sure footing to such as stand; that is not to pray, but to mock God, and to deceive our souls; for being out of the state of grace, and in such a state, as in which the last comfort of dying men (the blessed sacrament) cannot be received but most unworthily (that is but to the more damnation of the receiver) it must follow that as it is desperately doubtful, such a prayer cannot ascend, so it is definitely certain, that the work we go about in *Duello* is damnable: and upon presumption of being heard if we die in the fight, to hope by a temptation of God to escape in the fight, who can say whether it hath more of temerity or of impiety?

Knight. What shall become of all the books, and laws of *Duello*, or why were they written; that being manifestly so?

Count. Let them stand for laws when the case falls in which it is lawful to fight, and for that purpose they may seem to be written.

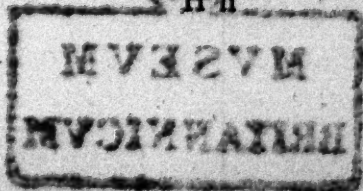
Knight. O reason, how potent thou art! my understanding and will thou hast subdued, and yet how can I avoid

the fight? This is my case; the adversary (who hath done me wrong) hath accepted the challenge, here is the length of his sword, the time and place are agreed unto; if I maintain not my challenge, let me withal renounce knight-hood, cut off my spurs, break my sword, see mine arms and honor revert before my face, and seek out some cloyster, or hermite's cell in the wilderness, and never behold the world more. It cannot be but I must fight or shame myself.

Gent. Neither, and yet your engagement is great.

Knight. I see the grounds of fight, whereupon I stand, very deceitful I confess, and the doctrine which led me to it to be *falsi nominis*. This way my understanding now doth carry me, but like some artificial thing which moves not of itself, but *impulsu alterius*, so the tyranny of an opinion of shame habituated in me by conversation, puts me on against it: but a shame upon that shame. After so many sound reasons do I now consult with myself, whether I shall please God or the world? Choose damnation or dishonour? There must be a care had of all. I will into the field at the time, and there show the reason of my unwillingness plainly and fully; if that may beget in mine adversary a conformity to reason, I have made a saving voyage, if not, I must do as I may; life is not worth a word speaking, if the goodness of a quarrel bear out the loss, something must be done for satisfaction of publick fame; for I may not abruptly give over, neither will I.

Gent. Perplex not yourself, good knight, but lay hold upon God and reason, and submit your will to them. All degrees and puntos may be holden, and your honor be as safe as your conscience. God himself will minister an outlet by which to escape so manifest peril of leeling him; yourself have already thought upon an ingenious, plain, and honorable course, but too full of temptation: for the sight of an obstinate enemy, with the opportunity (at the same time) of instruments to execute fury, and circumstances to do it at full, may thrust any man too suddenly into action, as in likelihood they will thrust you. God will provide a mean; and instead of going with you upon



so unlawful a match ; I shall restore you by his favour and assistance to your first peace of mind (worth all the world) to your parents, wife, children, and friends, (that dream not of your winding sheet as yet) and to your patrimony ; to the anchor-hold of honest life, and to all things else fit for a gentleman to enjoy, your conscience safe, your honor safe, and yourself safe.

And even as this was said, and as God would have it, there came in a messenger from Mr who had undertook the other gentleman, bringing with him these few lines which follow.

To my loving Friend Mr.

S I R,

I HAD before long found out Mr. Anthoni D., wholly taken up with preparing for his morrow business. I have assailed his reasonable parts, and subdued them to an acknowledgment of so much injury as he is truly culpable of, and if that may purchase his peace (as it ought) we have whom to save upon both sides from so certain a mutual danger. Speed back your answer.

Fare you well.

Glad of these news, but concealing them, I only returned thus much ; that I would have him come to me himself alone ; he did so, and after full and severe debatement of the whole proceedings, as if there were no remedy but to draw blood ; we jointly dealt with the knight, altogether ignorant of my negotiation, for that (I knew) stood most with his honor the strife was appeased, the parties happily brought together, and all things restored to better estate then before, with life not only not endangered, but with friendship also renewed, and made inviolable.

DEO GLORIA,



N^o XXXIX.

The Manner of judicial Proceedings in the Court of Constable and Marshal (or Court Military) touching the Use and Bearing of Coats of Arms; observed and collected out of the Records of the Tower of LONDON.

THE plaintiff must first by himself, or his procurator, bring his libel or petition unto the register to have it allowed by the subscription of the earl marshal, or his lieutenant in his absence, and entered accordingly by the register, who thereupon shall make a summons to the party defendant to appear at a certain time and place; and the seal of the court being set thereunto, he shall deliver the same to the plaintiff to be served upon the person of the defendant, or to be left at his usual place of abode, as in case of a subpoena out of chancery: the form of which summons is to be seen in the case of Clopton and Elaud, 7 Henry 6.

* The marshal, or his lieutenant or lieutenants deputed by him, by his deed in writing and under his seal being set in court, and the officers in their due places, proclamation shall be made according to the original in Scroop and Grosvenor's case, which the register must enter in his book.

† If the marshal be absent, and his lieutenant sit in his room, he must cause his commission made unto him by the earl marshal to be read in court, and an act is to be made thereof by the register.

‡ If the defendant appear not either in person or by procurator, being thrice called by the crier, upon affidavit

* At the day in the writ specified, he may also depute a lieutenant by word of mouth, as in Lovel and Morley's case. Circa medium. † Later Grey et Hastings. ‡ In breve versus William Clopton ad festum Robert Elaud.

taken by the register, and produced in court, testifying that he was served with the summons in manner aforesaid, the court shall award an attachment to one of the marshals to attach him, and have his body before the earl marshal or his lieutenant at a certain day or place. The form whereof is to be seen among the precedents of writs.

And being attached, he shall pay the usual fees to the marshal, and put in sureties, such as the marshal will answer for at his peril, to appear at the day, or otherwise continue under arrest, until he have appeared and satisfied the court for his contempt, and paid costs and damages to the parties, such as the court shall tax.

If the defendant appears either in person, or by his attorney, the libel shall be read in court by the register, and an act thereof entered.

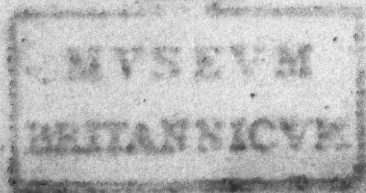
After the reading of the libel, the defendant shall desire a copy, and a day shall be appointed for him to make answer.

At which time also the parties interchangeably shall propose unto the court, by a schedule in writing, the names of those whom they have constituted to be their procurators and advocates (being antiently by a public instrument of of procuration) * signed by a public notary; for and in their names to prosecution of the suit, and to be allowed by the court, † whose act shall be taken as the act of the parties themselves: and shall put in pledges to perform the orders of the court. ‡ And where need requires, shall be bound with sureties to keep the peace during the suit.

§ At the day prescribed unto the defendant to make answer, he may, if he see cause, exhibit a schedule of exceptions to the libel of the plaintiff, to be read by his procurator in court, and to be entered by the register for annulling the same, demanding withal costs and damages for his unjust vexation, al'edging the libel is too general, defective, and of no validity to ground any process upon.

* *Inter Grey & Hastings. Et inter Lovel & Morley.* † *Pat. 14 R. 2. m. 47. inter Gilbert & Ducket.* ‡ *Pat. 2. H. 4. ps. 1. m. 7.* § *Inter Lovel & Morley.*

Whereupon



* Whereupon the plaintiff shall demand a copy of the said schedule of exceptions, and a certain time to reply to the same, which the judge shall accordingly grant.

At which day, the plaintiff shall exhibit a schedule by way of reply unto the exceptions of the defendant, and in maintenance of the original libel, which shall be read in court by the procurator of the plaintiff, and entered by the register.

† The plaintiff may further exhibit a second libel in declaration of the former, so that it be only by way of declaration, and all the substance of the second, be contained in the original libel. And the court shall adjudge whether the exceptions be to be allowed or not; and whether the defendant shall answer; and if he be awarded to answer, he shall require a copy of the declaration, and time to bring in his answer, which the court shall assign; otherwise, he is to be dismissed with his costs and damages; and the plaintiff shall not be admitted to put in a new bill until he have satisfied the said costs and damages.

At the day appointed for answer, the defendant may exhibit one or more schedules by way of exception to the declaration of the original libel, and the plaintiff shall demand copies, and time to reply, which the court shall assign, and so forth, proceed to duplication and triplication, if the court see cause upon the schedule of exceptions, for dismissing the original libel.

And note, that the confession of the advocate of either side shall be taken and proceeded upon, as the confession of the party himself.

If after the proceedings upon the exceptions against the second libel declaratory, the defendant be ordered by the court to make answer to the original bill, he may demand time, and the court shall assign him a day certain. At which day he shall make answer, and the plaintiff shall desire copies and time to reply.

• Lovel and Morley's case.

† Lovel and Morley's case.

And

* And at that day the plaintiff shall bring in replication in writing, of which the defendant shall desire copies and a day to duplicate.

† At which day the defendant shall bring into court in writing his duplication.

And then the court may, if they see cause, grant time to the plaintiff to triplicate; and after that the defendant to quadruplicate.

‡ After duplication (or after quadruplication) if the court have suffered them to proceed so far, the parties shall demand a day to examine witnesses, and to produce in court such testimonies, evidences, § and minuments as shall produce to the proof of their cause. After that, commissions may go down into the country to examine witnesses there, which must be done upon oath, || and articles, which in a case of bearing arms, the court shall grant to be done at a certain day, in manner following, viz.

** By sepulture certificates of abbots, and other ecclesiastical persons, testimonies of honourable witnesses who have had notice of their ancestors and antiquity, painted tombes, vestments, and other evidences. And besides, by the testimonies of lords, knights, and esquires of honour, and gentlemen having knowledge of arms; and by no other men of common or lower estate. All witnesses are to be sworn, except peers of the realm.

At the day appointed, the parties are to exhibit into court, such evidences, minuments, targets, seals, &c. and also attestations of witnesses certified by the commissioners under their seals, as make for their cause: and make protestation to use the exhibits, each of other, so far as they shall have occasion.

And these are to be kept in court under the seal of the constable or marshal, and a register or record is to be made of every particular.

* Observe that the lieutenants may sit in court together with the constable and marshal. † Grey and Hastings's case. ‡ Grey and Hastings's case. § Lovell and Morley's case; they require commissioners throughout all England. || Grey and Hastings's case. ** Lovell and Morley's case.

Then the court is to assign day for publication of all exhibits and examinations remaining and registered in the court, and copies are to be given to the parties.

* At the day of publication, the court shall assign a day for the parties interchangeably to speak against the testimonies and exhibits remaining in court, if they will.

At the day appointed, the parties interchangeably shall, if they see cause, exhibit a roll containing their exceptions to the testimonies and products before taken and exhibited, with protestation to amend any thing that is negligently or falsely written; and copies are to be delivered interchangeably to either party: and a day shall be assigned for either party to make replications against the exceptions.

At that day the parties shall interchangeably, if they will, exhibit their replications against the exceptions; and copies thereof being given to either of them, a day shall be assigned to consider whether the said exceptions and replications require proof, and whether the parties shall propone any further matter; and why the court should not after the said replications, proceed to judgment.

At which day so appointed, either party may propone new matter arising and springing out of the exceptions and replications; and witnesses shall be received and sworn in court, and examined by the register and some other commissioner joined unto him, to prove the said new matter; or to any commissioner as the court shall think fit.

The register at a day appointed by the court shall exhibit in court the examinations upon the new matter, and at the request of both parties, publication and copies shall be granted, and a day given to except against the said witnesses who deposed to the new matter; and both parties may make protestation to use the attestations of all witnesses examined, so far forth as they should have occasion, and may demand a day to hear sentence and judgment; and

* Observe, if any order be made in court, it is ever to be read at the next meeting before they begin any further proceeding,

before

before that day, another day for each of them to dispute, declare, and alledge that judgment may be given on their side.

The court may give them a day for each of them to make their allegations for judgment to be given on his side, but may (if they see cause) defer to assign any day for sentence and judgment until they be fully advised.

At the day so assigned, the plaintiff first, and then the defendant after him, repeat the whole cause, and make their allegations for judgment to be given on their sides, which allegations the court shall assign them to put into writing, and appoint them a day to bring them into court.

At which day the parties shall bring in their allegations in writing, and demand day to hear judgment, which the court may grant, or take time to advise upon.

When the court shall appoint a certain day to give sentence, both parties shall be charged to bring into the court all their evidences before exhibited.

At the day appointed for sentence definitive and judgment, the judge, accompanied with certain assistance, such as he shall please to call unto him, whereof anciently part were noblemen and part doctors of the civil law, after he shall have asked the parties whether they have any more to say in their cause, shall proceed to sentence definitive, and read the same, being first conceived in writing; * and then shall assign a certain day to set down his damages and expences of suit.

On that day he shall appoint a certain time for both parties to hear taxation of damages and costs.

At that time he shall tax the costs and damages as seemeth to him most reasonable; and shall award execution against the party condemned in costs, for levying of the same according to the use of the court; † and shall charge his marshal with the body of the party so condemned.

* Grey and Hasting's case.
X. ff. p. 1. m. 47.

† Grey and Hasting's case. Pat. 14.

Though any of the parties bring an appeal, and read it in court at the day of the sentence, and before the pronouncing of the sentence; yet the judge shall proceed to judgment notwithstanding, and grant execution against the party for the costs taxed.

Every appeal must be brought within ten days after the sentence given, and there must be a public instrument thereof made by a public notary, which must be exhibited in chancery.

* If any witness shall refuse to give testimony, being served with a writ *ad satisfaciendum*, he may be compelled by mu'ct or pain, or any other temporal coercion.

† The parties that refuse to perform the orders of the court shall be put in execution, and under arrest until they conform.

‡ The goods, chattels, lands, tenements, and persons of the parties, and their sureties, shall be liable to the sentence of the court.

Orders to be observed in the Court of the Constable and Marshal.

I. No bill to be allowed until pledges given to prosecute.

II. No writ of summons to issue forth before the bill be filed.

III. The defendant may appear by attorney, unless upon contempt for not appearing upon the first summons.

IV. No attachment to be awarded, until affidavit made that the summons were served.

V. Both parties to give sureties of the peace by recognizance.

VI. All bills, pleas, allegations, &c. to be in parchment.

* Pat. 14 R. II. ps. 1. m. 10. † Pat. 14 R. II. ps. 2. m. 47.
‡ Pat. 7 H. IV. ps. 2. m. 19. Pat. 1 H. IV. ps. 6. m. 31. Pat. 1 H. IV. ps. 4. m. 8.

N° XL.

A Defence of the Jurisdiction of the Earl Marshal's Court in the Vacancy of a Constable, and of his disowning Prohibitions sent thither from other Courts. By way of Letter to the Honourable Sir JOHN SOMERS, Knight, Attorney General to his Majesty, from ROBERT PLOTT, L.L.D.

Honourable Sir,

UPON presumption that it will not be denied by any, that this was a legal court, whilst there was a constable in being, I shall trouble you with nothing relating to it during that time; but give you first an historical account how matters were carried in reference to it, at and about the time of the extinction of that great office of lord high constable of England, and in what manner the office of earl marshal hath been exercised, and this court held ever since till within memory, which I shall perform with as much brevity, as perspicuity will admit of.

To come then immediately close to the business, pray take notice that the last person who bore that high office of lord high constable of England, was Edward Stafford duke of Bucks, who falling into disgrace with king Henry VIII. in the sixth year of his reign, and yet exercising the office of constable to the dislike of the king, he, in Michaelmas term of the same year, asked all the judges whether he might not disclaim the services of the constable, who unanimously agreed, and made their report to the king at Greenwich, as Dyer testifies (Reports, fol. 285.) that he might, and that it was expedient he should do so; that office being too high, dangerous, and expensive to the crown. Upon which, and some other motives, the said duke continuing to practise against the King, he came at
last

last to be beheaded on Tower Hill anno 1521, 13th of the same king Henry; since whom there was never any high constable in England, unless for a day or so, or upon some eminent occasion. Nevertheless the illustrious Thomas duke of Norfolk, lord high treasurer of England, a person in great favour with the king, being then earl marshal, did continue the exercise of his office notwithstanding the suspension and vacancy of the constableship, there being causes then depending, particularly between Writchesley then Garter and Benolt Clarencieux, concerning their rights to the funerals of the nobility; which controversy received large hearings before the said earl marshal, as appeared by the several bills, answers, replications, &c. remaining in the hands of one Penson, Lancaster herald at arms, and exhibited in court by Mr. Noy in his pleading, anno 1622. But this earl marshal dying anno 1524, the 16th of Henry VIII. within three years after this constable, the said cause was not concluded by him, but was further debated before Charles Brandon duke of Suffolk, who was the next earl marshal, as appears by the allegations of Garter, dated the 22d of Henry VIII. and the answer of Clarencieux, which are yet extant in the college of arms, and ready to be shewn; but this earl marshal resigning the said office, 25th Henry VIII. 1533, the said controversy did not receive a final determination under his administration, nor by the following earl marshal Thomas duke of Norfolk, lord high treasurer, lord high marshal, and lord high admiral of England, and vice-roy of Ireland, who, though he did not intermeddle in this cause, that I can any where find, yet held a court marshal for the trial of the Lincolnshire rebels, anno 1535, the 27th of Henry VIII. as is testified by the right reverend father in God Gilbert, the present lord bishop of Sarum, and may be seen in his history of the Reformation of the Church of England, part 1. lib. 3. p. 356. which is enough to shew, that the marshal's power of keeping a court was not thought illegal in those days, though there had been now no constable for above twenty years; nor was the jurisdiction of this court in the least contested.

In the reigns of Edward VI. and Philip and Mary, Edward Seymour duke of Somerset, and John Dudley earl of Warwick (afterwards duke of Northumberland) being then successively earls marshals: for though I find little done in it for all that time, mens minds being then so wholly taken up with controversies in religion, that scarce any regard was had for affairs of this nature, yet the sense of the government concerning the office of earl marshal and of his jurisdiction may be manifestly gathered from the commissions of those princes granted to the heralds of those times, the first whereof bears date the sixth of Edward VI. being a commission granted to William Heivey Norroy king of arms, wherein amongst other things it is particularly provided, that he should visit and oversee all arms, devices, and cognizances of the nobility and gentry; and if any default was found, to give notice to the king and council, and the marshal of England that reformation may be made according to the law of arms; that he should enter all descents and marriages, and reform all irregularities at funerals, and to take care that all such as should disobey the orders for funerals then in force, should answer thereunto, upon lawful monition, before the earl marshal of England. An attested copy of which commission I have ready to shew, taken from the original in the rolls.

In the first and second year of Philip and Mary a commission of visitation was granted to Thomas Hawley Clarencieux to correct all false arms, crests, and cognizances; also to take notice of descents, and to reform all such as were disobedient to the orders for funerals set forth by king Henry the VIIth. whereby it is also provided that all such as should disobey the same should answer thereunto, upon lawful monition to him or them given, before the high marshal of England; where by the way, it is also to be noted, that in the same commission, reference is had by way of *inspeximus* to two former commissions granted to the same Hawley in the 23d. of Henry VIII. and the sixth of Edward VI. wherein the same powers were before granted to him. An attested copy whereof is also ready to be shewn.

In

In the fifth and sixth of Philip and Mary another commission of visitation was granted to William Harvey, successor to the said Hawley, wherein the same powers are given him, and in case of disobedience to cause the delinquents to answer the same before the high marshall of England, and to make fine at his will and pleasure. An attested copy whereof is here likewise to be shewn.

In these two reigns (I say) though I do not find the earls marshals to have intermeddled much, perhaps for the reason above-mentioned, yet their jurisdiction all along stood unquestioned. But in the fifth of Elizabeth 1563, the aforesaid controversy between Garter and the provincial kings being re-assumed by Sir Gilbert Dethick, Knight, Garter, William Harvey Clarencieux, and William Flower Norroy, it was fully heard and determined by Thomas duke of Norfolk, grandchild of the former duke, then earl marshal, as appears by the decree itself under the said duke's own hand; as it stands entered in the partition book D in the office of arms, fol. 244.

Quickly after, in the eighth of queen Elizabeth, anno 1566, the rights and privileges of the earl marshal's court were so highly asserted by the lords of the council, that a purveyant being arrested in London, they immediately wrote their letter for his enlargement to the lord mayor and court of aldermen, setting forth that all such as should have occasion of suit against the officers of arms, ought to prosecute the same before the duke of Norfolk, earl marshal of England, in the court of his authority and office. Which original letter was extant before the fire of London in the town clerk's office of the said city, and was then consumed; but there yet remains a copy of it registered in a book in the office of arms marked with a red heart, fol. 82.

In the year following, being the ninth of Elizabeth, there rose a question concerning the arms of George and Thomas Heneage of Heynton, in the county of Lincoln, it being reported by some, and bruited abroad, that the said gentlemen did unjustly bear the arms they pretended to. Which question being brought before the same Thomas duke of Norfolk

Norfolk, earl marshal, received by him a full hearing and final determination, as appears by the judgment signed with his own hand, in the first or old partition book in the office of arms, fol. 280.

The very next year the controversy between Garter and the provincial kings, some new matters arising, was revived again, and heard before the same earl marshal, who made another decree for the final settlement of it, 10th Elizabeth 1568, under his hand and seal, the original whereof remains in the college of arms, and is ready to be shewn. And this is the decree by which Garter and the provincial kings are guided to this day.

There happened likewise this year a great controversy between the dean and chapter of Westminster, and the kings and heralds at arms, concerning their right to a herse set up in the abbey church; the examination of which matter was by the same earl marshal referred to the marquis of Winchester, then lord treasurer, and the earl of Leicester, as appears by a certificate of the whole proceedings under the hands and seals of the said lords, dated 24th Feb. anno 1568, whereupon it received a final determination the year following, anno 11th Elizabeth: the originals of which certificate and judgment are ready to be produced, as also copies of the whole proceedings well attested by a publick notary, then register of the court, and entered in a book in the office of arms marked L. 2. from p. 45 to p. 52.

Moreover, how highly the jurisdiction of this court was asserted by the prince about this time, appears by a commission of visitation, dated 24th March 10th Eliz. granted to Robert Cook then Clarencieux king at arms, wherein the same powers are given concerning arms, descents, and funerals, as to his predecessors above-mentioned, in the times of Edward VI. and Philip and Mary; and in case any manner of scruple, doubt, or question, or any misdemeanour of any person or persons whatsoever happen, that cannot conveniently be decided by the said Clarencieux, it is provided, that he shall command such person or persons whom the
said

said question or misdemeanour shall concern, under a certain pain, at a certain day to appear before the earl marshal of England for the time being, before whom the said scruple, question, or misdemeanour shall be heard and ordered according to the law and customs of arms in that case provided, and of ancient times used; any statute, law, proclamation, or usage to the contrary in any-wise notwithstanding. An attested copy whereof is ready to be shewn.

The title, honour, and barony of the lord Dacres of Gillestland and Greystock came also in question the same year, and was first brought before the same earl marshal; but because the duke was both father-in-law and guardian to the coheirs, for avoiding all manner of suspicion of favour, his grace became humble suiter to her majesty (that though the trial thereof of very right did appertain and belong to himself by reason of his office of earl marshal of England, as a matter incident to be tried, decided, and judged before him in respect of his said office of long time used and accustomed) that some of her highness council might be by her grace appointed to hear, determine, and judge of the right and title of the said barony. Whereupon it pleased the queen's majesty, by the full consent, assent, and agreement of the said duke, to direct her highness's commission to the lord marquis of Northampton, the earl of Pembroke steward of the household, the earl of Arundell, and the earl of Leicester, giving them thereby authority to hear, determine, and adjudge the controversy aforesaid according to equity and right; with a special proviso, and saving always, that the same should not be by any manner of means prejudicial to the said duke, but that in such like cases of debate and controversy, which at any time hereafter shall happen and come in question, the said duke by virtue of his office of earl marshalship may hear, determine, and adjudge the same, as though this commission had never been granted; which cause was fully heard and determined by the aforesaid marquis and earls at Greenwich the 12th and 19th of June 11th Elizabeth, as appears by the judgment which was ordered by the said lords

lords commissioners to be delivered into the office of the heralds and officers of arms, there to be fully and wholly enrolled and recorded without any manner of addition or diminution; where I accordingly find it entered in a great book at the office of arms, marked W. G. from fol. 200 to fol. 206. Whereof there is also a memorial still preserved in a manuscript of judge Hales's at Lincoln's-inn. Tit. nobility. A copy whereof I can readily shew whenever it shall be required.

There were some few other controversies of the like kind that received determination in this earl marshal's time, but he dying quickly after in anno 1572, 14th of Elizabeth, George earl of Shrewsbury became the next earl marshal by patent, bearing date the 15th of Elizabeth, during whose earl marshalship the controversy between the two Leighs of High-leigh in Cheshire, concerning their arms, received a full hearing and final determination, as appears by the sentence itself and the said earl marshal's mandate to Norroy king of arms and Somerset herald, his marshal, willing and requiring them of this his sentence, doom, and determination to take knowledge, and the same to record in the books and registers of the office, where I find it accordingly entered in Glover Somerset's Cheshire, as in its proper place, fol. 299.

After the death of George earl of Shrewsbury, which happened 32 of Elizabeth, A. D. 1590. the earl marshalship was exercised by commission given to William lord Burleigh, lord high treasurer, Charles lord Howard Effingham, lord high admiral, and Henry lord Hounsdon, lord chamberlain of the household, the 34th of Elizabeth anno 1592. Before whom several causes were tried and determined proper to this court, and amongst them that great cause betwixt the earl of Kent, plaintiff, and George Rotheram, Esquire, and William Dethick, Garter, defendants, for the barony of Ruthin, which received a formal proceeding and final determination from them, as appears by their sentence; the original whereof was extant, and exhibited in court by Mr. Noy in his pleading, anno 1622, and a copy whereof is still preserved in the college of arms ready to be shewn.

Which commissioners continued the administration of the office of earl marshal but to the 28th of December 1597, when Robert earl of Essex was solemnly created earl marshal of England by the queen's majesty at Whitehall, in whose time there happened a quarrel between Anthony Felton and Edmund Wirthipol for a disgrace by bastinado offered by the said Edmund to the said Anthony; which cause was first judicially heard at Whitehall in April, anno 1598, and in May following received a second hearing and final determination by the earl marshal, who calling to his assistance divers lords, knights, &c. did order and decree, as appeareth by the judgment under his hand and seal in a large book in the office of arms marked W. H. fol. 414.

In the same earl marshal's time, and in the very same year, there arose a controversy between Mr. Edmund Nevill, and the lady Jane for the barony of Abergavenny; for the receiving of whose claims a court of chivalry was called Feb. 15th at Essex-house, where and when the earl marshal craved the assistance of divers lords, one of the lord chief justices, and some other judges of the common law. Before whom the parties appearing with their council, such as Mr. Attorney General, Mr. Serjeant Williams, &c. the matter was opened at large, as appears by the minutes of this court still preserved in the college of arms, in a book marked W. H. fol. 409. which was then adjourned to another day; the earl marshal in the time advising with the two lords chief justices, as appears by several questions he sent to them by William Clarendieux, who returned their answers accordingly, making no doubt of the validity of his court; which questions and answers of the said lord chief justices are still extant in the possession of Sir Henry Saint George now Clarendieux king at arms, under Mr. Camden's own hand.

But the earl of Essex being sent over into Ireland, and not living long after his return, no further proceedings in this cause were had before him; however the jurisdiction of the earl marshal's court, in the vacancy of a constable, receives so much benefit by it, that it is plain it then

stood fair in the eye of government, the lord chief justice, the other judges and eminent common lawyers all assisting at it, and not at all doubting of the authority of the court, notwithstanding there had been no constable in effect (since the disclaimer of king Henry VIII. in the first year of his reign) for above fourscore years.

After the death of the earl of Essex there was a commission granted by the queen's majesty to Thomas lord Buckhurst, Charles earl of Nottingham, lord high admiral, and Edward earl of Worcester master of the horse, for the execution of the office of earl marshal of England; during whose administration Robert Trefwell Somerfet herald was arrested in London, contrary to his privilege, by William Smith and William Lane, at the suit of Margery Fictner, about a pall of velvet which had been used at the funeral of the lord Mordant, whereof complaint being made in the house of Lords by the earl of Worcester, the parties were sent for, in custody of a serjeant at arms, to appear before the house of lords, Dec. 4th 1601, where, after the matter had been debated for some time, it was at last, viz. on the 8th of December following, referred to her majesty's commissioners for those causes that concern the earl marshal's office, to be determined by their lordships, as appears by the orders of the lord's house of the third and eighth of December 1601, copies whereof are ready to be shewn, signed by the clerk of the parliament, by which orders the proceedings in this cause in the King's Bench were stopt, though ready for trial, and the jurisdiction of the earl marshal's office vindicated by parliament.

Upon the death of queen Elizabeth, and king James's coming to the crown, Edward earl of Worcester was made earl marshal for the day of the coronation, which being over; his majesty joined others in commission with him for the execution of that office, viz. Lodowick duke of Lenox, and the earls of Dorset, Nottingham, Suffolk, Devonshire, and Northampton, in whose time a question was moved in the house of Lords concerning the precedence of the baronies of Abergavenny and Le Despencer, which their lordships

lordships referred to the examination and consideration of the lords commissioners for causes belonging to the office of earl marshal of England; who having called unto them the principal heralds and other officers at arms, and received information from them, as also considered of sundry ancient records pertaining thereunto, did set down under their hands and seals, their order and judgment touching the proceedings and preheminences of the said baronies, which was read this present sixth of July in the house, and was generally approved of by the lords; and thereupon was ordered to be registered in the journal books of the parliament, where the said orders of the lords, and a copy of said sentence yet remain entered, as appears by the journals of the sixth and seventh of July, anno 1604. 2 Jac. I. copies of which are ready to be shewn, signed by the clerk of the said house. The lord Abergavenny notwithstanding, not being fully satisfied, moved the lords commissioners for another hearing, which, though they granted, yet not finding sufficient ground to alter their former sentence, they confirmed it again under their hands; which last sentence remains also upon the journals of the house of lords of the same date as above; where we find also the jurisdiction of the earl marshal of England confirmed again in parliament in this king's reign.

In the tenth of the same king James, one William Penfon preferred a bill in chancery against Sir William Seager, garter king at arms, and others, for a part or share of the profits dividable among the heralds, intituling himself thereto by a grant of the office of Chester herald, which he had surreptitiously gotten a patent for, under the great seal: whereof the lord chancellor Ellesmere being sufficiently informed by the lords commissioners for the earl marshal's office and the defendants, and that the said Penfon had his coat pulled off his back for the said misdemeanour in his majesty's closet, did order that the said matter should be absolutely dismissed out of this court with forty shillings costs, and the plaintiff left to attend the said lords commissioners for marshal causes, if he shall think meet. A copy of which

dismission of the said cause out of the said court of chancery, to the court marshal, I have ready to shew, signed by one of the deputy registers of the chancery.

The year following there also happened a controversy between Ralph Brook, plaintiff, and Henry Saint George, defendant, in the court of chancery for fees arising and growing by virtue of their offices as heralds; to which the defendant demurring, it was ordered, that unless the plaintiff should shew unto the court good reason within a time prefixed, why the cause should not be thence dismissed to be decided before the lords commissioners for the office of earl marshal, as a matter most proper to be decided in their court, that then the defendant's demurrer should stand; and the plaintiff at the time of the order alledging, that there was no such court as the earl marshal's court, but the court of the constable and marshal, which could only be held at such a time as there was a constable or commissioners for that office; upon opening the matter by Mr. Francis More, the court was of opinion that the said commissioners for the earl marshalship of England had power to examine the matter in controversy; whereupon it was ordered that the matter should from thence be clearly dismissed as most proper to be decided before the said lords commissioners. A copy of which dismissal I have ready to produce, signed by the same deputy register. Which two dismissions out of the court of chancery to the earl marshal's court do sufficiently evince, that it was esteemed a legal court in those days, notwithstanding the same allegation was then made in abatement of its jurisdiction, that now is.

Add hereunto, that on Thursday the 26th of April 1621, in the 19th year of the same king James, one Sir Francis Mitchell was accused in the house of lords by the house of commons, viz. that he had erected an office upon two commissions touching gold and silver thread, kept a court, made officers, and divers unwarrantable orders, and exacted bonds for the observance of same; whereof being convicted, the lords spiritual and temporal did award and adjudge, amongst other penalties (the sentence being pronounced by

by the then lord chief justice) that the said Sir Francis Mitchell should stand, and be thenceforth degraded of the order of knighthood, and the ceremonies of degradation to be performed by direction of this court, to the earl marshal's court, as appears upon the journals of the house of lords of the fourth of May 1621, which accordingly was performed the 20th of June following in a court marshal held in the King's Bench court in Westminster Hall before Edward earl of Worcester, lord privy seal, Lodowick duke of Lenox, lord steward of the household, George marquis of Buckingham, lord high admiral, and Thomas earl of Arundel and Surry, premier earl of England, then lords commissioners for the office of earl marshal. The whole manner whereof is set down in a book in the office of arms, marked W. H. from fol. 467 to fol. 468. In which proceedings these three things are chiefly to be observed. First, that both lords and commons agreed and acquiesced in the sentence; secondly, that the lord chief justice pronounced it; and thirdly, that it was executed in the King's Bench court in Westminster Hall; which sets forth to us a joint concurrence of both houses of parliament, and of the common law itself, in avowing this court to be legal and of sufficient authority, without a constable, in the most publick manner that could be contrived.

Quickly after, on the 29th of August 1621, anno 19 James I. Thomas earl of Arundel and Surrey, to the great satisfaction of all good men, was made earl marshal of England: in the very beginning of whose administration the very same effort was made upon the jurisdiction of this great office, that now is by means of the same Ralph Brook above-mentioned and Robert Trefwell, the former whereof having for divers misdemeanours been suspended from the execution of his office by the lords commissioners ever since Jan. 1620, and the latter also suspended by them from any receipt of his dividends of the fees of the office, till he should conform himself to the orders of it, and both refusing to submit either to the orders of the lords commissioners, or of the office, and thinking to repossess themselves of their places
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and profits by some other course, did commence divers frivolous suits, first at common law against their fellow officers; but failing of their expectations at common law, they exhibited a bill in Chancery, dated ninth of October 1621, against Sir Richard St. George, knight, Norroy king at arms, and Henry St. George, Richmond herald, alledging they had received great sums of money, of which they were to have a dividend part, and for that they were left remediless by course of common law or laws marshal of this realm, by reason there is no court of constable and marshal; wherefore they desired that the defendants might be called into that court, and answer upon their oaths what fees and profits they had received from the last of April 1620 to the date of the bill, wherein the plaintiffs ought to have the share. To which the defendants demurred for these causes; first, because both plaintiffs and defendants were Heralds; and secondly, because the matters in question were for fees incident to their offices, which according to the orders of the lord chancellor Ellesmere were matters heretofore dismissed out of this court to be determined by the lords commissioners for the office of earl marshal, as most proper to be decided in that court.

But Brook and Treswell, nothing pleased with this demurrer, and resolving to put the matter home, to overthrow the power of the earl marshal, and shake his authority, as they termed it, moved the court, that in case the defendants did not shew good cause within a time prefixed, that then they should make a direct and perfect answer to the plaintiff's bill, according to which order the defendants came into court; where upon opening the matter by Mr. Noy, the court, in regard the matter in hand seemed a point of jurisdiction, and not of debt, as the plaintiff's council would have had it, would not give order (the master of the Rolls, and Mr. Justice Jones being only in court) but left the further consideration and absolute decision to the lord keeper. Whereupon his lordship made several references of the matter: first, to the earl marshal; secondly, to two of the king's learned council at law, whereof

whereof Mr. Attorney General to be one; but neither of these references pleasing the plaintiffs, they obtained a third, November 30th 1621, which was to the two lord chief justices, Mr. James Lea, lord chief justice of the King's Bench, and Sir Henry Hobart, lord chief justice of the Common Pleas; whereupon the said lords appointed Tuesday 11th of December at two in the afternoon at Serjeant's-inn in Fleet-street, in the chamber of the chief justice of the Bench, to hear the said cause.

Upon this the defendants, apprehending that the cause now related rather to the earl marshal than themselves, acquainted him with it, and what was about to be done; who was so sensible of it, that he thought fit to send a message to the chief justices to inform them that he understood the matter concerned him in the jurisdiction of his court, and that his lordship saw no cause of any attendance on his part in that business, and that there needed not any such haste in the proceeding thereof, as his lordship conceived. However the chief justices, the plaintiffs council, and the messenger had some debate upon the matter, wherein the lord chief justices both owned the earl marshal's court to be a very great and honourable court, and of great antiquity, and were of opinion, that if the plaintiffs had not first begun their complaint before the earl marshal, they had done ill; wherefore they jointly forbore to proceed any further, saying, that though the lord keeper was pleased to refer this point of jurisdiction to their censure and opinion, yet understanding by the message sent them by the earl marshal, that his lordship did not agree to it, they therefore dared not to presume to meddle in the matter, or give any opinion therein without both their agreements.

In the mean time the earl marshal acquainting the king with the whole business, his majesty directed his letter to the lords of the council, dated Newmarket, December 8, 1621, requiring them to take this matter into their present and serious consideration, and that if upon hearing what should be alledged by the earl marshal, or any for him,

him, the said Brook and Trefwell could not clear themselves of these insolencies and contempts offered the earl marshal, and his jurisdiction, they should take an exemplary course of punishing them, to deter others from the like attempts hereafter; withal telling them, that he took his honour to be engaged, to defend the power and reputation of that court, which is of so high a nature, so ancient, and so immediately derived from himself the fountain of all honour. Which letter stands entered in the book for council causes upon Dec. 12, 1621; upon receipt of which letter by the lords of the council, their lordships appointed Friday the 14th of December following in the afternoon, in the council-chamber at Whitehall, to hear the matters, commanding all parties to be there, and give their attendance; where also were Mr. Noy and Mr. Whitfield, two counsellors at law, who came on behalf of the earl marshal, who, after the lords were sat, did set forth the insolent and contemptuous behaviour of these men toward the earl marshal, and the just authority of his court in such causes, so plainly, that their lordships concluded that the earl marshal had full power to determine all matters of difference amongst heralds for fees and all other incidents of their offices, and that it was plainly proved that the plaintiffs had contested the earl marshal's power and authority, &c. They caused a warrant to be drawn for their commitment to the Marshalsea, where, after they had remained three weeks, Trefwell submitted himself to the earl marshal by an humble acknowledgment of his offence, and was set at liberty. But Brook persisting in his obstinacy, continued still (though in prison) to bring actions against his brethren in the Common Pleas, viz. one against the three kings of arms, another against Samson Lennard, Blewmantle, and a third against John Philpot, Rouge dragon, and these all for fees of his office, still derogating from the honour and power of the earl marshal's court; which actions stand entered in the second prothonotaries office in the court of the Common Pleas; certificates, whereof, upon intimation given of them, were immediately sent for by the council.

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During this contest of his power, the earl marshal it seems had delayed all manner of proceedings in his court, upon which the king, about the time that the lords of his council had sent for the certificates of the causes commenced in the Common Pleas, writes another letter to them, dated at Greenwich the 25th of June in the 20th year of his reign, giving them to understand, that whereas the earl marshal had delayed to proceed in some causes depending before him, the reason whereof he found to be in respect that divers doubts and scruples had been cast forth, whether the earl marshal was a judge without a constable, &c. That he therefore as supreme judge, did require them to take this point into their serious consideration, and to hear what should be produced by the earl marshal, and prepare it for a summary hearing before him (the king) in person in case need should be. Upon the receipt of this the lords of the privy council called for the prothonotaries certificates of the causes, which when their lordships had read, and found they were for fees, they caused a peremptory order to be drawn for the stay of the proceedings in that court till further direction from their board, strictly requiring that no attorney or other officer of the said court of Common Pleas, nor any other subordinate minister towards the law, should move or do any act or thing for the further proceeding in those causes, of which they were thereby to take notice at their peril. A copy of which order, signed by one of the clerks of the council, is ready to be shewn.

At the same time of their making this order, their lordships appointed a day for the hearing of the matter at large concerning the power and jurisdiction of the earl marshal now in question, which they appointed to be on Thursday the 11th of July 1622, in the afternoon in the inner Star Chamber, where the council often sat in those days. Whither at the time appointed came a great number of lords and others of the privy council, viz. the lord keeper, the lord treasurer, the lord president of the council, the lord privy seal, the duke of Lenox, the marquis of Hamilton, the lord chamberlain, Mr. Treasurer of the household, Mr. Secretary Calvert, the master of the Rolls, Sir John Suckling, and Sir

Edward Conway, where also Sir Thomas Coventry, knight, his majesty's attorney general, Mr. Noy, and Mr. Whitfield, attending the business as council for the earl marshal, were called in; by whom the authority of the earl marshal severally, as well as jointly with a high constable, was so fully set forth (a copy of which pleading is yet extant) that the lord keeper, as mouth of the rest of the council declared, that the authorities brought and alledged by the council were so very good, that it was plain the earl marshal was a judge, and had power of judicature in the vacancy of a constable, as well as with the constable, and that there had been as much said to prove the authority of that court, as could be said for any court in Westminster Hall, of all which in particular the council then agreed to certify his majesty.

Upon report whereof to the king, his majesty was pleased to issue forth his commission under the great seal of England, dated at Westminster, August 1st, in the 20th year of his reign, directed to our right trusty and right well beloved cousin and counsellor, Thomas earl of Arundell and Surry, our earl marshal of England, greeting; where, after recital that he had been informed that he (the earl marshal) had delayed to proceed judicially in some causes before him depending in the court marshal by reason, that some doubts had been divulged that the earl marshal was no judge, nor could hold a court without a constable, &c. We held it fit (says the king) in a case of so great weight, to proceed with extraordinary deliberation, and having now, both by ourself and the whole body of our council, received ample satisfaction by many and clear proofs, that the constable and marshal were joint judges together, and severally, in the vacancy of either; we do hereby authorize, will, and command you our earl marshal, that from henceforth you proceed in all causes whatsoever whereof the court of constable and marshal ought properly to take cognizance, as judicially and definitively as any constable or marshal of this realm, either jointly or severally, heretofore have done; and that you do by all means endeavour to restore and settle the honourable proceedings of that court in all the rights thereunto belonging; for which our pleasure is, that you

assist yourself as much by antient records and precedents as you may, &c. Which commission yet remains in the signet office, a copy whereof is ready to be produced; in which form all the commissions or patents of all the earl marshals, or commissioners for the earl marshal, have been drawn ever since.

In pursuance of which commission, the said earl marshal held a court of chivalry or court marshal in the painted chamber at Westminster, on the 24th of November anno 1623, *annoque* R. Jac. I. 21^o. where a cause against one Sir Thomas Harris, touching his quartering of the arms of other families with his own, was first promoted by Sir Francis Kinnerley, and both prosecutor and defendant did put in stipulations to prosecute and appear, and abide the orders of the court, &c. as in all other causes which now were daily brought thither, whereof some were against certain painters and other tradesmen at the instance of the king himself, who sent his mandate to the earl marshal, dated at Theobald's, 19^o September 22^o Jac. I. ordering, that whereas complaint had been made to him, that certain painters and other tradesmen of the city of London, and of the other parts of the kingdom, have of late taken the boldness of themselves to paint and marshal the coats of arms for the funerals of divers persons, whereby the officers of arms were not only damaged, but many foul abuses and wrongs daily perpetrated, to the great scandal of the antient nobility and gentry of the realm; that for the speedy redress of this mischief, he (as to his office of earl marshal of right appertaineth) should cause all such persons as should be found offenders in cases of this nature to appear before him, and, according to the quality of their offences, to cause them to receive due punishment by imprisonment or otherwise. Which original mandate under the king's own hand remains in the herald's office in the book marked W. K. fol. 17.

Notwithstanding all this, the same Ralph Brook above-mentioned, York herald, animated by some turbulent *Lagu-* *leis* of that time, on the 20th of May anno 1625, 1^o Car. I.

A Defence of the Jurisdiction

preferred another bill in chancery against Thomas Bartholomew and Benjamin Agar, defendants, suing them for fees due to him upon the creation of certain knights; to which the defendants demurring, the matter was referred to judge Dodderidge to consider (upon hearing both parties) whether the said demurrer was sufficient; who accordingly having heard the said parties, did certify to the then lord chancellor, that in regard the cause of suit was for fees due to him as a herald, upon the making of knights, the cognizance of the matter did properly lie before, and under the determination of the right honorable the earl marshal of England: which certificate is still preserved in the college of arms, signed (as it is believed) with the said judge Dodderidge's own hand, in the book marked W. H. fol. 525. From which time forward, to the breaking out of the civil war anno 1641, the earl marshal tried all sorts of causes lying before him without the least interruption, not one privy seal being taken out for all that time to stop either himself, or his lieutenants, in any of their proceedings, and there was but one complaint or appeal made to the king from any of his judgments, which too was not reversed, but confirmed by the king 1^o Car. I. notwithstanding the causes in this earl marshal's time were so very numerous, that formerly, as it appeared by the acts of court, more than sixty causes have been depending at a time; so careful was he in receiving any cause that belonged not strictly to him, and in acting uprightly in all his proceedings and definitive sentences.

Who dying anno 1646, Henry Howard lord Maltravers, now earl of Arundel and Surrey, both by right of inheritance, and by virtue of a patent bearing date 1^o July 15^o Car. I. anno 1640, granted in his father's life-time, became earl marshal of England. But the civil war continuing, and he dying quickly after in anno 1652, nothing was done in his time, nor during the usurpations of Oliver and Richard Cromwell, or the following governments: this office as it were sleeping till the happy restoration of king Charles the second, who granted a commission dated May 26, 14^o Car.

Car. II. anno 1662, to George duke of Albemarle, Henry marquis of Dorchester, Edward earl of Manchester, and Charles earl of Carlisle, and others for the execution of this office, in whose time there happened a cause so very pertinent to our present purpose that I cannot pass it by, which in short was this: one Henry Parker, painter-stainer, of London, having painted the achievements, great banner, and banner-rolls, and other ensigns of honor for the funerals of the then lord Paulet's lady, and of the right honorable Charles lord Gerard of Gerard's Bromley, and marshalled their funerals, without the appointment or allowance of Sir Edward Walker then garter king at arms: he the said garter made his complaint against him, by way of petition to the said lords commissioners, sometime in January 1667. Whereupon the said Henry Parker being summoned by the said lords commissioners, appeared before them on Friday the 24th of the same month, at which time the petition of garter being read in the presence of the said Parker, and his usurpation upon the office of the said garter duly proved against him; he was (upon his refusal to submit himself, and to promise not to offend again in like manner) committed by their lordships warrant prisoner to the Marshalsea.

But the next morning motion being made by his council in the court of king's-bench for a writ of Habeas Corpus, the same was granted; and by virtue thereof the said Parker was brought to the bar of that court on Monday the 27th of the same month, where his council made objections against the legality of the commitment; alledging, that the said lords commissioners had not lawful power and authority for what they had done; whereupon it was moved by council on behalf of the said lords, that the court would assign a day when council might be heard on their lordships part, for asserting their power, and that Parker might be remanded to prison until that time; which being granted by the court, and the last day of the said month appointed for that purpose, the said Parker was again brought into court, and by his council made the like objections

objections as before, averring that the said earl marshal or lords commissioners for that office, had not any jurisdiction or power to hold a court of themselves without a constable.

But the council on behalf of the lords commissioners so fully proved the power and authority of the earl marshal, in the vacancy of a lord high constable, that the court being well satisfied with what had been alledged in the behalf of the said lords, remanded Parker back again to prison, admonishing him to apply himself to the said lords commissioners, by an humble submission and acknowledgment of his fault, with promises not to transgress in the like for the future. Moreover the said judges then declared their opinion, that no painter ought to meddle in preparing any arms or ensigns of honor for any public funeral, without order and direction from the kings or officers of arms respectively; unto whom, by virtue of their offices, it belongs for the time being. Whereupon the said Parker on the second of February following, through the intercession of Mr. Justice Windham being admitted to make his submission, obtained a warrant from the said lords commissioners for his enlargement, which being delivered to the keeper of the prison, and he the said Parker brought next day to the king's-bench bar, the court declared he might go at liberty, being none of their prisoner.

In these lords commissioners time, there were also other great irregularities daily committed in the funerals of persons almost of all-qualities; for the remedy of which abuses, the said lords commissioners did settle the trophies and states for the funerals of all degrees, as appears by their original orders dated November 22, 20 Car. II. anno 1668, under their hands and seals, now remaining in the office of arms, and ready to be shewn; which orders are the rule by which all the officers of arms are now guided.

In short, the whole power of the constable seems now invested in the marshal alone, not only in holding a court, in hearing and determining all deeds and matters of arms, and other usages and customs to the same matters pertaining, whether directly relating to the officers of arms, or

some

some way incident to their offices; but in other matters, also heretofore jointly in the power of the constable and marshal, which now are vested in the marshal alone, such as are the choice and nomination of the officers of arms, the making of a *Series ordinum*, and ordering all proceedings of states, as at coronations, &c. which were formerly in the constables jointly with the marshals, but are now solely in the marshal's power, witness the choice and nomination of all the present officers, the *Series ordinum* made by the lords commissioners for the marshal's office temp. Eliz. and the proceedings of state at the coronation of king James the first; whereof the original yet remains in the college of arms.

And thus, Sir, I think I have sufficiently made it appear from the practice of the times immediately after the office of the lord high constable was extinguished; from the sentiments and patents of all the princes since that time; from the orders of privy-council; from orders and acknowledgments of parliaments; from dismissal of causes from other courts to this court; from the opinions and acknowledgments of many judges and other eminent practitioners in the common law; and from divers original uncontested proceedings and sentences in the said court, in all times since the extinction of the office of high constable till within memory. I think, I say, from these I have made it most evidently appear, that the jurisdiction of the earl marshal has always been esteemed valid, notwithstanding the vacancy of a lord high constable, for now near an hundred and fourscore years.

Nor in all this time was there ever any prohibitions sent from any other courts to stop the proceedings of this: no other way (until now) being ever thought or heard of, but that of privy-seals, which method was introduced the 13th of Richard II^d. There were, it is true, other statutes made before that time, whereby it was intended, that the constable and marshal should be restrained in their proceedings, viz. one in the 28th of Edw. I. chap. 3. whereby it was ordered, that whereas the marshal did hold pleas of freehold,

freehold, debt, trespass, and contracts between the king's people, he should henceforth do so no more. Again, by a statute of the 8th of Rich. II. chap. 5. it was enacted, that whereas divers pleas belonging to the common law were of late drawn before the constable and marshal; that all pleas and suits touching the common law, which ought to be examined and discussed at the common law, should not be drawn or holden by any means before the said constable and marshal, but that the court of the same constable and marshal should have that which belongeth unto the same court, and that the common law should have that which to it belongeth.

Nevertheless, there being no way as yet expressly prescribed, either by custom or the aforesaid statutes, how irregular proceedings should be stop't in this court, those two great men, Thomas of Woodstock duke of Gloucester, &c. the king's uncle, and Thomas Mowbray duke of Norfolk, the king's near kinsman, being constable and marshal, did by their great power break through those laws, and still continued to hold pleas in all things as before. Whereupon the commons complaining to the king that the constable and marshal's court had drawn to itself, and did daily encroach to itself contracts, covenants, trespasses, debts, detinues, and many other actions pleadable at the common law of the land, to the great prejudice of the king, and of his courts, and to the great grievance of the people of the realm; did petition, that it would please the king to ordain, that that court might not take cognizance of any manner of contract made within the kingdom of England, which might be tried by the common law, saving only contracts touching arms, which cannot be tried by the common law. The king hereupon January 17, in the 13th year of his reign, did make an order touching the extent of the jurisdiction of this court, joining therunto a method how it should be stop't in its proceedings, in case it should hereafter attempt any thing not belonging to it; an attested copy of which petition and order I have ready to shew: which being after confirmed in parliament, is

that

that statute of limitation of the constable and marshal's power 13th Rich. II. chap. 2.

Whereby it is provided, that if any will complain that any plea be commenced before the constable and marshal, that might be tried by the common law of the land, the same complainant should have a privy-seal of the king, without difficulty, directed to the said constable and marshal, to surcease in that plea; till it be discussed by the king's council, if that matter ought, and of right pertaineth to that court, or otherwise to be tried by the common law of the realm of England: and also that they surcease in the mean time. According to which statute this court has been regulated in all ages down to this time, whenever it has exceeded its jurisdiction, as in that great cause betwixt Pountney and Berney, mentioned in the year books of the 14th of Hen. IV. fol. 4 and 5. the which I the rather instance, because it was quickly after the making the statute, when they best understood the intention of it, and was of that difficulty, that the lords of the council did indeed refer its consideration to the judges of the realm, before whom it was debated in the exchequer-chamber; where it was determined, that the plea of the matter in hand did appertain to the common law: but let it be noted by the way, that it came not thither by any other method, as the year books testify *loco citato*; but by the mediation of a privy seal obtained by the defendant Berney, and direction of the king's council, before whom (or such as they shall appoint) such matters by the statute are ordered to be discussed.

But now we are told, that the statute including no negative words in it, it not being there said that the constable and marshal shall be stopt by a privy seal, and no otherwise; that they may as well be stopt by a prohibition sent immediately from any of the courts of Westminster-Hall. To which I answer, that this were true indeed, could it be proved that prohibitions had been ever used before this statute; it being a rule in law, that the affirmative words of a statute do not change the common law, or alter a precedent power or interest: but I fear our adversaries will be

so very far from a positive proof, that prohibitions were ever sent to stop the proceedings of the constable and marshal before this statute, that they will fail of rendering it so much as possible; for could this have been done, there had been little need of this statute at all; nay, indeed the whole had been useless and frivolous: wherefore I doubt not but this statute, though only affirmative, ought to be esteemed as exclusive to all other methods (as I question not it will with all indifferent judges) as if there had been negative words put in for that purpose.

Besides, I find it a sort of maxim in common law, that where an affirmative in a new law doth give power and interest to a person certain, or order a thing to be done before a person incertain, in this case *inclusio unius est exclusio alterius*. Dr. Foster's case, co. 11. But it is plain that this affirmative statute doth give power and interest to a person certain, viz. to the king, to grant a privy seal without difficulty, &c. and order a thing to be done before persons incertain, viz. the king's council, to discuss whether that matter ought, or of right pertaineth to that court, or otherwise to be tried by the common law of the realm of England, and they (the constable and marshal) to surcease in the mean time. Therefore this affirmative statute, that such pleas as are commenced before the constable and marshal that might be tried by the common law of the land, shall be stopt by a privy seal, doth exclude all other methods, though no negative words to that effect be expressed therein.

I know it has and will be objected, that the causes against which the prohibitions now in question were sent, are such as may be tried at common law by an action upon the case, as in the action of Sir William Dugdale, knight, Norroy king at arms, brought against Randall Holmes of the city of Chester, painter, at the assizes at Stafford, term^o Hillarij, 19^o Car. II. anno 1667, for marshalling the funeral of Sir Ralph Ashton of Middleton in Lancashire, which suit was commenced against him by an action upon the case, and accordingly tried and determined at the common law;

law; to which I answer that as to the matter of fact, that the said cause was so tried and determined, is very certain, but that it was so done out of necessity and not of choice, is also as certain, no court of chivalry being at that time, nor for a long time before having, been held; so that the said Sir William Dugdale having no other remedy, was necessitated at that time to fly to the common law, and commence his suit by an action upon the case; as many others heretofore in cases tryable at common law, have been forced to do in the earl marshal's court, when the common law courts have not been within reach, as may plainly be proved by the *Placita exercitus apud Berwyk*, 24 Edw. I. where the marshal alone (which is also remarkable, there being no mention of the constable in the whole roll) tried all sorts of causes tryable at the common law (as well as such as related to himself) and that by juries, as is usual at common law. Of the acts of which court I have some few copies attested by the sub-chamberlains of the tally-court, in whose custody these records still remain, and where more may be had in case it be required.

I say Sir William Dugdale being then without relief (as the plaintiffs at Berwyk were) was forced to fly to the common law, and bring his action upon the case, which certainly he would not, nay could not have done, had there any court martial been then in being: an action upon the case (as the books define it) being a general action given for redress of wrongs done without force against any man, and by law not especially provided for. But that this case of Sir William Dugdale was most specially provided for by the law of arms, had there been a court of chivalry in being, is not only manifest by the statute itself, which allows all matters and deeds of arms, and other usages and customs to the same matters pertaining, to be tried by this court, but by many of the preceding cases, allowed both by the lords of the privy council, and even by the judges of the common law themselves, to be tryable there, as matters either directly belonging to the officers of arms, or some way incident to their offices.

Wherefore, had the court marshal been then in being, Sir William Dugdale could not have tried his cause by bringing an action upon the case.

Not to mention, that had this case of Sir William Dugdale been never so nearly related to the common law, had there been a court of chivalry, and the cause been commenced in it (as the cases were, against which the prohibitions are now sent) it must however have been removed by a privy seal, and first past the decision of the lords of the council, as in the case above-mentioned of Pountney and Berney, before it could be removed to any common law court, and not by such prohibitions as these, which do not only lessen the jurisdiction of the earl marshal, but of the king himself, of the lords of the council, and of the lord privy seal, who will all, it is to be hoped, be equally careful of preserving the rights as by law established as the earl marshal himself.

And thus, Sir, according to your desire, and the best of my skill, I have drawn you a short scheme of the matter in hand, which is in all humility submitted to your judicious management, wherein, though perhaps I have but exposed my weakness, yet it may serve to shew my zeal for the earl marshal's service, and that I am willing to approve myself (though to the hazard of my reputation) that I really am,

S I R,

your most faithful, ready,

and most dutiful Servant,

ROBERT PLOT.

N^o XXXVIII.

N^o XXXVIII.

CAMERA STELLATA:

O R,

An Explanation of the most famous Court of STAR-CHAMBER: together with an Account of the Offences there punishable; the Fees payable, and the Orders for Proceedings therein.

By Mr. TATE.

AS in the government of all commonwealths, sundry things do fall out both in peace and war, that do require an extraordinary help, and cannot abide the usual cure of common rule and daily justice; the which is not performed but after one sort, and that not without some delay of help, and expence of time: so albeit here within this our realm of England, the most part of causes in complaint are referred to the ordinary process and solemn handling of the common law, and justice itself, yet there always have arisen some few matters which have been reserved to a higher hand, and have been left to the aid of absolute government and authority.

Of this sort it is, for example, that if any merchant, privy, or stranger be robbed of his goods at sea, and the same do come to the hands of any person within this realm, the merchant may by the statute 27th Edward III. chap. 13th sue for the recovery of his goods, and shall be allowed to prove the same to be his own, either by his mark, charter-party, or cocket, or by the testimony of honest merchants, and thereupon such goods shall be delivered to him again without other suit at the common law.

Neither is it hard to judge before whom this suit, whereof that statute speaketh, ought to be commenced, seeing that

that the prince of the land (who is the very spring and well-head of all justice) hath remaining within himself (as Mr. Bracton noteth) all manner of authority and jurisdiction which he hath not delivered over to others his subaltern justices.

And therefore king Richard the third (as we have it in the second year of his reign) sat in person with his council in the Star-chamber, and there heard the cause of a Spanish merchant that sued upon the same before-mentioned statute, for his goods robbed at sea. And the chief justice, 1 Henry VII. chap. 3. reports, that king Edward the fourth used the Star-chamber for conference with his nobility about the execution of sundry statutes; for the better observing of which, he there took the corporal oaths of them all; so that, as it seemeth, this place was the council chamber of the king when he and his court remained at Westminster, whereof although but little be said and registered in books of law, because lawyers were not then used in it, yet I doubt not but the records of the kings have plentiful mention of the acts in the same.

Now whether the place of court of Star-chamber be so called in respect it is starry, that is, full of lights and windows; or for that the roof thereof was at the first garnished with images of golden stars; or by derivation from the old English word *Steorum*, which signifieth *To Steer*, or *Rule*, as doth the pilot in a ship; or whether it were so termed of the word *Stellio*, which betokeneth that starry and subtle beast, of whom the fault of crafty cosenage is by the civilians called *Stellionatus*, which also is punished in this court by an extraordinary pain, even as it is with them; the matter is not of such importance, that it requireth any long discourse or eager disputation; yea the present labour shall be better employed, if leaping over the name, we enter into the court itself, and unfold the right use and end thereof, which shortly is this.

* To apply an honorable high and lawful remedy for such enormities and excesses, as either be so exorbitant in

* The use of the court

them.

themselves, that they are not sufficiently revenged by the usual stroak of law; or be meet to be heard upon the stage as it were; that many may take a lesson thereby; or else be committed by persons of such poor parentage, or wealthy in their own countries, that the ordinary course of law is hindered, and cannot there proceed to the due correction of them; in all which cases right necessary it is, that the prince himself, or those that be nearest in the Star-chamber of authority under him, do shew themselves: by the majesty and awe of whose personal presence, both such offenders may be abashed and beaten down, and such offences made exemplary and forewarning to others.

* But now because I do not find that there was either ordinary session in this court, or express declaration of the pleas that were properly to be handled therein, before the time of king Henry the seventh, I will begin with the statute thereof made in the third year of his reign, and first peruse it, and the offences contained therein, and then afterwards touch some other particulars, whereof this court doth usually take hold and understanding.

The beginning of the Authority of the Court.

The ordinary authority of the court of Star-chamber began by the statute made in the third year of king Henry the seventh:

By that statute it is enacted, as well for repressing of unlawful maintenance of giving of liveries, signs, and tokens of retainments by writing, or otherwise by imbraceries of the king's subjects; of untrue demeaning of sheriffs in making pannels, and returning of writs, and of taking of money by juries; as also for the punishment of great riots, and of unlawful assemblies of people:

That the chancellor or treasurer of England for the time being, and the keepers, and the keeper of the king's privy seal, or two of them, calling to them a bishop, a

No ordinary session in that court, nor express pleas.

temporal

temporal lord of the king's most honorable privy council, and the two chief justices of the king's bench and common pleas, or in their absence, other two justices of the king's, shall have authority upon bill or information put to the chancellor for the king, or any other, to call before them, by writ of privy seal, any of the said misdoers, and by their discretions to examine them and others by whom the truth may be known, and such as they shall find defective, to punish after their demerits, according to the form and effect of statutes hereof to be made, in like manner and form as they should or ought to be punished, if they were thereof (by due order of law) convicted.

* And this statute was accordingly put in execution until the parliament in the one-and-twentieth year of king Henry the eighth, by which time experience had espied some wants in this behalf. The which were then by the 20th chapter thereof supplied in this manner, viz.

That the chancellor, treasurer of England, and president of the king's most honorable council, attending upon his person, and the keeper of the king's privy seal, or two of them, calling unto them persons named in the former statute, upon any bill or information, be put in for any misbehaving in the said former statute rehearsed. The said chancellor, treasurer, president, or keeper of the privy seal shall have authority to call before them by writ of privy seal such misdoers, and them, and others, by whom the truth may be known by their discretion, to examine, and the delinquents to punish after their demerits, after the form and effect of the said former statute, and of all other statutes thereof tofore made and not repealed, on such manner as they ought to be punished, if they were convicted thereof after the due order of the king's laws: and so by the latter statute these things are wrought, viz.

First, That the president of the king's council is hereby added, and made one of the judges of this court.

* Stat. 21. Hen. VIII. chap. 20, a supplemental statute of that of 3 Hen. VII.

Secondly,

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Secondly, A doubt is taken away that might have arisen upon the words of the first statute; namely, whether the bishops, the temporal lords of the king's council, and the justices named in that statute, were judges equal in authority with the chancellor, treasurer, and keeper of the privy seal; or else, were but only assistants of their council and advice; for here in this latter law, the full authority is given to the chancellor, treasurer, president, and keeper of the privy seal; and the rest are only to be called unto them, for their advice: but yet there is a necessity of calling them: for that the proceeding is erroneous, if either they do not call them; or hear not their advice, when they are called.

Thirdly, Whereas the former statute willeth to have the said offenders punished after the form of the statute hereof to be made; this other statute referreth the punishment to the form of that, and of all statutes before that time made, and being in force.

Lastly, The bill or information may by this latter statute be put in general, whereas by the words of the former law, it ought to have been put to the chancellor.

By these two statutes then it is brought to pass, that whereas before time, the handling of these offences did proceed by twelve men; that is, either by way of indictment, or by action conceived upon the statutes that did prohibit those offences: now the same may, without any inquest or verdict, be determined by examination; and that either of competent witnesses, or of the parties themselves; a thing that was never permitted by the common law of the realm, which alloweth no trial but *per legale judicium parium*, as Magna Charta plainly doth acknowledge it. And this was now at the last done, because as these statutes themselves do report, that ordinary proceedings at the common law, against these maintainers, retainers, rioters, and the rest, were hindered by the greatness of the offenders; the which were so breasted, sided, and backed with many friends, tenants, and followers in their own countries, that no indictment or trial could make way against them. An evil

tending to the utter subversion of the good policy of the realm, if this sovereign and higher hand had not been timely extended for help and remedy. But yet by the express words of these laws, the offences therein named, are in none other degree to be punished now in this court, than they were before by indictment, and the trial of twelve men. And therefore all the change that is in this matter, resteth chiefly in circumstances of place, the process, the judges, and the means of the trial: the very substance, that is to say, the fault itself, and the pain due thereto, remaining the same that they were before. From which appointed pains, if these lords shall at any time vary by their discretion; that must be understood to be done by some former authority, which they had: as by the council of the king, and not by virtue of these statutes, which leave unto them no liberty at all in this behalf.

Thus much being said, touching these things, let us now descend to the particular numeration and handling of those offences, that are by these statutes to be heard and determined by the lords there; and they are in number eight, viz.

First, Unlawful maintenance.

Secondly, Giving of liveries, signs, or tokens.

Thirdly, Retainers by writing, or otherwise.

Fourthly, Inbraceries of the king's subjects.

Fifthly, Untrue demeaning of sheriffs in making of panels, or other untrue returns.

Sixthly, Taking of money by juries.

Seventhly, Great riots.

Lastly, Unlawful assemblies.

All which are but either by fraud or force, to the hindrance of the execution of law, and to the increase, as one of these statutes saith, of murders, robberies, perjuries, unsafety of mens lives, and loss of their goods and lands, forgeries, and all other offences, which by corruption of time are sprung up, and no law provided for their punishment, but by this court, who hath authority to punish beyond the statutes, according to the nature of the offence.

Now

Now for the better manifestation of these matters, I will lift them up by one and one, in order as they lie; and first shew the nature of the fault; then the evils that do ensue thereof; and lastly the punishment that by law is laid upon it.

What Maintenance is.

Maintenance seemeth to be derived of the Latin word *manu tenere*, because he that maintaineth, taketh in hand, as it were, and holdeth the cause of another man, as fast, as if it were his own proper cause. And therefore maintenance is a kind of conspiracy made by two or more persons against some other, because the very party to the cause, and some other that steppeth into the furtherance of it, do combine themselves together, and do make a complot against the adverse party to the same. And this may be as well for matter changing the suit or plea, as for some other cause, not being brought into plea or action.

Howbeit *maintenance* is commonly understood of causes in suit: as when one that hath no interest to a matter in question, will either give money to council, or will take some interest, of purpose to make the cause seem to be his own, or will shew himself, or give his speech or countenance for the one side against the other, at such time as the matter shall be heard or tried, or will terrify or discountenance the contrary side, or generally will do any thing for the one party to the hindrance of the free course of justice against the other.

Of this *maintenance* there is one sort that beareth a special name called *champarty*, because the party to a suit giveth to some other man for maintenance sake, *campi partem*, that is, some part of the thing in demand, or otherwise some profits going out of the same.

Champartors, saith the statute third of Edw. II. be they that move pleas and suits, or cause them to be moved by their own or other mens procurement, and sue them at their proper costs to have part of the land in variance, or part of the gains that may come by that suit.

N n 2 *The*

The perils that ensue of Maintenance and Champertie, viz.

The persons that fall into this fault of *maintenance* or *champertie* be either public, as officers, or else private men; and the evils that do ensue thereof be great in them both, but seemeth greater in public persons, as they that have (which private men do want) the helps of their offices, and aid of their authority to work their harms withal.

For if it be permitted, that every one, and especially such as have the higher places, may step into the quarrel of another, and maintain it as their own, both by their purse and power, then shall the cause of the poor and honest be overthrown and trampled under foot, and then shall the wicked be emboldened to offer injury, and the way to redress it shall be shut up and fast barred.

The laws of the realme have therefore, according to the diversity of the offences therein, ordained sundry and divers punishments

And first for maintenance thus :

None of the king's counsellors, servants of his household, officers of his courts, or great men of the realm, shall take upon them to maintain any quarrels or parties in the country to the disturbance of the commonwealth, upon pain of their offices, bodies, goods, and lands to be at the king's pleasure. Stat. 1 Edw. III. cap. 14. 4 Edw. III. cap. 2. 20 Edw. III. cap. 4. & 1 Rich. II. cap. 4.

No man shall by any means buy or sell, or take promises or covenant to have any pretended right or title to any lands, tenements, or hereditaments, unless he that so selleth, promiseth, or covenanteth, that he or his ancestors, or they by whom he claimeth, have been in possession thereof, or have taken the rents or profits thereof by the space of one whole year next before such sale, covenant, or promise, upon pain that such seller or promiser shall lose the whole value of the thing bought or promised; and that such buyer or taker of promise, knowing thereof, shall likewise lose the whole value thereof.

No man shall by any sinister labour or means maintain any matter or cause to the disturbance or hindrance of justice,

tie, upon pain to lose ten pounds for every offence.
Stat. 32 Hen. VIII. cap. 9.

No sheriff or steward of any court shall suffer any bar-
retor or maintainer of quarrels in their county courts or
otherwise, upon pain that the king shall grievously punish
both the sheriff and him that so doth. Stat. 3. Ed. I. cap. 32.

No person, after forcible entry by him made into any
lands, or after holding the same with force, shall make any
feoffment for discontinuance sake, to any lord or other person
to defraud the possessor of his recovery, and if it may be
proved, then that feoffment or discontinuance shall be void.
Stat. 8 Hen. VI. cap. 9.

No person, shall maintain any riot, rout, or unlawful Riots.
assembly, that the same thereby may not be found by the
jury charged to enquire thereof, upon pain of imprison-
ment, and to forfeit twenty pounds. Stat. 19 Hen. VII.
chap. 13.

Touching *champartie*, it was ordained, that such as take Champertie
pleas to *champartie* by any craft or means shall, if they be
any of the king's counsellors, household servants, justices of
the courts, or ministers there, have three years imprison-
ment, and make fine at the king's pleasure. Stat. 21 Ed. I.
And if there be any other person than such, then they shall
forfeit so much of their own lands and goods, as the things
that they have so brought shall be worth. Stat. 28 Ed. I.

Giving of liveries, badges, and other signs or tokens, is Giving of
the next fault in order to *maintenance*, and partaketh of the Liveries.
same matter, being also a kind of conspiracy to maintain
some party, and to make it great withal. For on the one
side, when noble and mighty men and gentlemen do per-
ceive that the trial of causes in the country proceedeth ordi-
narily by the mouths of Franklings and Yeomen Freeholders,
and do find themselves unable without such, to recover
their wrongs and oppressions, with the cloak of law, then
do they many times retain such men into their avowment,
services, and protection, offering unto them the countenance
of their nobility, authority, wealth, and friends, that they
may also receive reciprocal favour and good help by their
solicitation

solicitation and means among the freeholders of the country that be their neighbours, friends, and kinsfolk.

And on the other side, these good fellows seeing that the cloak and cloth of a nobleman, or other great personage, is a good defensative against such stones of law or other business, as do arise in the country; and that might many times, as the proverb is, doth overcome right; they willingly, and by great suit emband themselves amongst their other servants. And many of them, when they find themselves invested, wax afterwards so bold as to offer such wrong to their neighbours, as they were at the first glad to be shielded from. Besides this there was wont to be another kind of league and alliance, not of many servants, but of equals amongst themselves; whereof no less mischiefs have ensued than of the former; for the vulgar and base people, espying that the churchmen were rich, and strong by their conjunctions; that the nobility, gentry, and best yeoman-drie of the country were fast linked together in bonds; and that in cities and corporate towns also there was an usual combination of many into one body; so that all other sorts of men, besides themselves, were strongly united, and they only left to stand by themselves; they fell therefore into shouling and banding companies, and each man at his own charges suited himself in like coats, hoods, hats, laces, or other marks, whereby they might be known each to other of them.

Now although such connections may at the first shew deceive many with a vizard of amity, love, and brotherhood; yet the wisdom of the law, which is able to unmask such fraud, hath discovered many dangerous evils that lie and lurk underneath them.

For besides that the common course of justice between man and man was greatly interrupted by those confederacies, so as hardly any man that was not party to such a conjunction could either ask his right against any of them, or repel the injury that they should offer unto him (the cause of every one of them being used as the common cause and quarrel of them all) it was found perilous by many proofs,

even

even to the state and kingdom itself; that either noblemen or gentlemen should draw so long tails after them, or that the meaner sort of the people should be suffered to make so strong bodies and bonds among themselves; both which are of the seed and weed of mutiny, tumult, and rebellion. The laws have armed their power against them; providing at the first, that no yeoman, or other person under the degree of an Esquire, shall take any livery of any lord, except he be his household servant or continual officer, upon pain of five and imprisonment. Stat. 16 Rich. II. cap. 4. & 20 Rich. II. cap. 2.

Then afterwards it was ordained upon like pain, that no lord spiritual or temporal should give livery to any knight or esquire other than to his household servants, officers, and council learned in the law. Stat. 1 H. IV. cap. 7. which law stepped so far into this matter, that it forbad knights and esquires to wear the king's own livery during the time that they had their abode in their countries.

King Henry the fourth seeing this evil to increase, did also increase the pain, and laid five pounds upon the giver of any livery, if he were a knight or under that estate, and forty shillings upon the taker. Stat. 7 H. IV. cap. 14.

At the length the penalty of five pounds for every month was inflicted upon the giver, and the like upon the taker, except he were his household man, officers, or council at the law. Stat. 8 Ed. IV. cap. 2.

And because it was at the length perceived that the officers of the king's own castles, manors, forests, chaces, and parks were retained unlawfully by other men, and did also retain into their own services unlawfully the king's farmers and tenants, those offences were also drawn into judgment, and punished by the loss of their offices and leases. Stat. 3 H. VII. cap. 12.

Thus far of liveries, signs, or badges given by the superior to his inferior.

As touching the other confederacy of common people, the same was also prohibited under the pain of forty shillings

laid upon every one of them that should congregate himself by the use of any common livery, those fraternities and mysteries that were ordained to a good intent of cities and boroughs only excepted. Stat. 7 H. IV. cap. 24.

Retainment without any liveries.

And now it might seem that sufficient law had been provided against all kinds of retainments. But yet it was found true, that one said, *he that will devise law against offences, hath the head of Hydra to fight with all*; seeing that one evil is no sooner cut off, but another starteth up and taketh the place.

And even so it fell out with this matter of retainments. For when the law had laid sharp correction upon the giving of liveries, signs, badges, or other notorious tokens of unlawful complots, then it was devised that men should secretly bind themselves together for maintenance of quarrels by oaths, promises, or writings; whereof there grew a great deal more hurt than of all other retainments besides; for that in those other retainments men served at liberty, and might change when they would. But by these means they were so fast tied, that without breach of oath or promise (things whereof all men make some conscience) they would not be set free and delivered. And therefore such retainers, and he that is retained, are to lose a hundred shillings a piece for every month that such their retainments should continue, by statute 8 Ed. IV. cap. 4. These be the pain that law hath provided; and these be the evils that former times have espied concerning the matter of retainments.

But yet there is in time a further mischief begotten; the which, if those laws had foreseen, they would have whetted a sharp edge against it. For seeing that in former ages the payment of subsidies, the service of masters, and other common charges of this our time were not usual, the harm of retainments was not then so thoroughly seen and discovered as now it is. There is nothing more usual at this day than to retain the weakest yeomanry and others, by forbearing them wholly, or charging them lightly to make recompence of their service, by robbing of the king's coffers,

coffers, or defrauding him and the realm of that help which they might bring, if they were equally burdened as their neighbours are, and not favoured by them that manage those services, [in respect that they belong unto them. Which things considered, it is to be wished that either sharp laws were provided, or at the least that former laws were more severely executed against unlawful retainments. But now to the rest.

Imbracerie.

That imbracerie of the king's subjects, which is mentioned in these statutes, may be of two sorts. For either it may be taken for the drawing of men into bonds and counterpains for maintenance, or else it may signify the seducing of jurors to pervert justice; the which is more properly called, and more commonly known by the name of imbracerie; and yet it is a sort of maintenance and conspiracy also. For in this respect the statute of 28 Ed. I. called this sort of men false informers and imbracerers of assizes and juries; and the statute 38 Ed. III. cap. 13. defineth them to be imbracerers, which do solicit and procure inquests in the country, to make gain and profit thereby. It took the name, and may well be derived either of the French word *embracer*, which is to kindle or set on fire, or else from the word *embraster* in the said language; which our tongue hath adopted and useth in the same sense; that is, where one man taketh another in his arms, and (as we usually speak) embraceth him; for by a metaphor of the first meaning, he that laboureth a jury for the one side or party, may well be termed an imbracerer, because he cannot do it without kindling or incensing the minds of such party against the other party; so by a metaphor of the second meaning, he may be said to be an imbracerer of a jury, that maketh much of them and embraceth them in the arms of fair speeches, gifts, or promises to them; to assure and win them to the one side against the other. So that if a man will take upon him to labour and ply a jury for the one side, before they come to the bar; or by any means endea-

your to corrupt them for the help of the one party against the other, he is a special maintainer under the name of imbracerie.

The Harm of Imbracerie.

What evils do follow of this fault may be seen by this; that it is a sort of maintenance, and therefore sendeth abroad the like effect in generality that other maintenance hath; but especially it is occupied in corrupting of jurors, which are in effect the very judges of our law, seeing that the judge can give none other sentence than according to the verdict which the jury presents unto them.

Now what harm may ensue by poisoning the prison of jurors in this realm (whereas the chief proceeding in law is by the means of them) every man may see; and to say the truth, no less mischief doth accompany it, than the secret undermining, ruin, and overthrow of all law, right, and justice. Worthily therefore hath the law, 38 Ed. III. cap. 13. ordained, that if any person shall for his own gain embrace any jury or inquest, he shall lose ten times so much as he received; and if he have not wherewith to answer so much, that then he shall endure a whole year's imprisonment. But if he shall embrace a jury without taking any thing for his labour; yet by the statute 32 Hen. VIII. cap. 9. he shall pay ten pounds for every such offence.

Misdemeanours of the Sheriff.

And now as those that serve to do wrong, can little prevail by running the course of law, though they be never so well furnished with retainers and followers, and enquests also; unless, withal, by the help of the sheriff and his clerk, such men be returned and put into the pannel, as the parties themselves should nominate and like; even so this statute, seeing that causes in law depend no less upon the uprightness of the sheriffs service, then doth the door upon the hook by the means of which it openeth and closeth at pleasure, they have in the first place noted two several misdemeanours.

nours of that officer, and have referred the correction of the same to this honourable assembly in the Star-chamber.

The one is the untrue demeaning of the sheriff in making pannels, and the other is his falsehood in other returns.

By the pannel is meant the catalogue or roll wherein the names of four-and-twenty good and lawful men ought to be returned by the sheriff, out of whom the number of twelve men are to be tried and sworn, and to yield their verdict upon each matter in issue that is triable by jury, between man and man; and the same, or a greater number of them, are to be charged for enquiry on the behalf of the king.

The Evils of this Misdemeanour.

In which part, if the sheriff shall apply himself not to serve the court and justice, whose minister he is, but the one or the other party who shall corruptly win him; then shall not the better cause, but the fuller purse prevail; and it shall be all one, whether the party be judge of his own matter, or procure such jurors as himself shall nominate, to pass upon the matter in trial for him.

And as in this part of his office the good demeanor of the sheriff maketh much to the furtherance of right; and his corrupt dealing may highly advance injury and wrong; so also by all other returns, and answers of his service to his majesty's courts, he may greatly help or hinder the matter in question; either in winning time against the plaintiff by dilatory returns of his writs and process, or wronging the defendant by untrue answers made of that which he hath in charge, or abusing both them and the court by sending in no return at all.

The Pain of such Misdemeanours.

In all or the most of which cases, although the party defrauded by him may sometimes help himself by averment against his return; sometimes by complaint to the court where the suit dependeth; and at other times may find amends by an action upon the case of his abuse; yet

the law, seeing that justice is many times both delayed and deluded by such unlawful services, hath first touching pannels generally provided by the statute 42 Ed. III. cap. 28. and 34 Ed. V. cap. 4. & 2. for the better direction of the sheriff in that behalf, viz. upon pain to be fined after the quality of the trespass against the king, and to lose the quantity of the damage sustained by the party.

In all manner of pannels, those persons should be put that be most substantial, worthy of faith, and not suspected nor procured; but having best knowledge of the truth, and being most nigh to the place where the question in law doth arise. By the statute 18 H. VI. cap. 14. it was ordained to continue for a time, that if the sheriff or bailiff should take any thing for arraying of a pannel, the party grieved should have his action and recover ten times so much against him.

That this abuse might be the more surely depressed, especially in cases where the service concerneth the prince himself, order was taken by the statute 3 H. VIII. cap. 12. that the justices of the gaol delivery, and of the peace, might reform all pannels returned before them to serve the king; and that the sheriff and his ministers shall, under the pain of twenty pounds, estfoons return the same so returned by them.

Many other rules there are particularly set down by statutes concerning the value of the jurors, in lands and goods returned in sundry sorts of actions concerning hundreds, to be inserted in the pannel among them; touching the quantity of the issues that the sheriff ought to return upon every of their heads; and such other matters, whereof many do carry their special pains with them: all which are overlong to be recited here, and be sufficient of themselves to make the body of a large discourse. Therefore to come to the other part, where either the sheriff will not receive the writ at all, or receiving it, will make no return of the same. There is a large statute made 13 Ed. I. cap. 39. by which statute it is enacted, that the party may himself deliver the writ openly unto the sheriff, or may deliver it to him

by

by other witnesses, and that if he do not then return the same, the party shall have damages against him according to the peril that might come unto him by that delay.

The like remedy is there given if the sheriff will untruly return, that the writ came so late unto his hands that he could not for want of time make execution of it.

There is help also for the untrue return of small issues upon a man whose land is able to answer great ones; and for the unjust charging of the bailiffs of liberties to have made him no answer of the writs that he sent unto them; in all which cases of false return, power is given to the ordinarier justices to punish the sheriff once or twice for his offences, but if he fail the third time, that then no man shall have to do therewith but the king. Even by the same statute no judge or officer may take upon him to punish a great man that shall resist the sheriff in the execution of the king's writs, except the king himself, to whom that power is reserved; because, as the statute speaketh, such persons be disturbers of the king's peace, and of his realm.

But forasmuch as the under-sheriffs clerks waxed bold to commit the same offences, for which their masters were to be punished, and for which there was not yet any sword of law drawn against them; there was in the time of the same king an ordinance made, and called *tractatus contra vicecomitem et clericos*, by which it was provided, that if the offence of a false return be found in the person of such a clerk to the sheriff, that then such clerk shall make both fine to the king and satisfy the parties hurt, if he be able, and the sheriff to go quit. But if the clerk be insufficient, then is the sheriff himself to answer for him.

It would prove tedious to present the variety of all those pains and forfeitures that law, in force, hath devised against the untrue returns of the sheriff.

Neither is it so fit for the purpose that I am now in hand with; seeing that in the most of them, the ordinary remedy given by those statutes is sufficient revenge; and therefore having already proved that part which best serveth for giving jurisdiction to this court, I will go forwards to the handling of the rest.

Taking

Taking of Money by Juries and the Evils thereof ensuing.

It is justly to be suspected, that if the jury take money to give their verdict, they will with Judas betray the truth: and if it be most true, that gifts and bribes will pervert the judgment even of the wisest, then how can it be otherwise, but that the common man shall be drawn aside and corrupted thereby? the which fault is much greater than either conspiracy or maintenance. However, if either of the parties that be but private men, procure false or undue dealing in the sheriff and his clerk, who are publick officers, yet, howsoever they should collude among themselves, and close together, an upright and faithful jury, that without respect of reward would attend to the truth of their evidence, might overthrow the frame of whatsoever mischief the party, sheriff, and his clerk should intend and imagine between themselves. And therefore when the jurors also shall pledge the one of the parties in that cup of poison which he hath brewed to destroy the life of his adversary's right, what can be looked for, but that the better side shall have the worse and take the fall? And this being seen into by the law, it was ordained by the statute 38 Edw. III. cap. 13. that if a juror in any inquest to be taken for the king, or between parties, do take any thing by himself, or by any other, of the party plaintiff, or defendant, to stay the verdict, then shall he pay *decies tantum*, ten times so much as he hath taken; whereof the one half to be to the king, whose judgment and justice he hath perverted, and the other half to the party, or any other that will sue the same: and if he have not sufficient wherewith to satisfy this law, then to have the imprisonment of a whole year. In which statute one thing is especially to be observed; that to take any thing whatsoever in staying of the verdict, is an offence against it; although the statute 3 H. VII. which submitteth this fault to the punishment of the Star chamber, hath no mention but of the taking of money; which words, if they be not construed by an equity, the whole law may be de-
 luded by it.

Great

Great Riots and unlawful Assemblies.

After this, and the rest of the offences that are carried in the lap of fraud, coven, and deceit, great riots and unlawful assemblies, which will make their way by force, come next to my hand.

The which two offences, though they be distinct faults both in the property of their own nature, and in the order of these statutes, yet, because for the most part the one is but the effect and sequel of the other, I will wind them up both on one bottom together. Not without cause, but for distinction sake, doth the statute 3 H. VII. call some riots *great*; for sundry former laws do note two manner of riots, the one less in respect of the smaller number of persons that commit it; as in regard of the small terror, disturbance, or hurt that ensueth of it; the other great or heinous, because it savoureth of a more general disobedience, even to the shaking of the state; and is, or may be in regard of the number or quarrel, a very seed of mutiny and rebellion; and therefore the statutes 5 R. II. cap. 6. and 7 R. II. cap. 2. & 6. do term the riots of this latter sort by the names of *rumours, great ridings, routs, and riots against the peace*. The statute 2 H. V. cap. 9. calleth them *assemblies of people in great number in manner of insurrection*; and the laws 5 R. II. cap. 2. and 1 Mary cap. 12. do name them rebellious insurrections and rebellious assemblies.

What is an unlawful assembly, rout, and riot.

The offences of all these sorts are now at this day distinguished by their received names; that is, *unlawful assemblies, routs, and riots*. An *unlawful assembly* is commonly taken to be a company of three persons or more gathered together to the end to commit forcible and unlawful acts; a *rout* is likewise construed to be, where such a company of three or more being gathered to such an end, who do move forwards by going or riding, put their intention partly in practice, but yet do not come to the very actual handling and execution of their purpose. A *riot* is the very effect and final act of such a company of

three or more assembling, proceeding, and putting in execution forcibly that unlawful work which they intended. As for example, if three persons or more under the number of twelve, do assemble themselves unlawfully to beat any person; or to enter forcibly into the house or land of another; or to pull down the inclosures of any park, warren, or ground inclosed; or to destroy any fish pond, pool, or dove-house; or to do such other act, and being so assembled, do go forward about the same, and do effect their desire, then is this an *unlawful assembly* for their first meeting, a *rout* for their moving forwards, and a *riot* in the end by their execution.

From whence a Rout and Riot are derived.

This word *rout* came from the Saxons, who to this day call *rowte*, a band or company of men riding together. *Riot* we borrowed of the French *rioter*, which signifieth to brawl or scold; because most commonly outrageous deeds do follow contention and scolding words.

The evils that will ensue, if fellow subjects may be suffered to run when they list on heaps; and to put and push each at other as the wild and savage beasts of the field and forests are wont to do, are so great and apparent, that they bewray themselves, and need no words to blaze them. The pains, therefore, that the law hath inflicted upon such assemblies, routs, and riots, be these, viz.

The parties offending shall be taken by the justices of the peace and sheriffs, and be thrown into the next gaol till they have made fine and ransom to the king. 15 Rich. II. cap. 2. Rioters attainted of great and heinous riots shall be imprisoned one whole year at the least without bail or mainprize, and then make grievous fines. And such as shall be attainted of petit riots shall have imprisonment, and make fines as shall seem good to the king's justices. Stat. 2 H. V. cap. 8.

But if the number of such an assembly be twelve or more that shall attempt any of the things prohibited by the statute made against unlawful and rebellious assemblies in the first year

year of the late queen Elizabeth her reign, and do continue together by the space of one hour after proclamation made for them to depart; then is the offence felony, and may receive punishment in another degree, and in another court, by the ordinary course of lawful trial.

Now have I run over the first part of my purpose, and have not only dealt with the statute that gave the first ordinary session and authority to this court, but have also discovered those eight several offences that are contained therein, the which I have not so largely discoursed of as the argument itself would bear, especially for that part which describeth the pains; partly, because I meant only to make a summary shew of the whole matter; and partly, for that the judges of this court are not tried (as I said before) to the prescript pains of those laws; but as the cause shall offer to their honourable discretions, may alter or increase any of the same.

Of those other Faults whereof this Court hath Jurisdiction.

It remaineth that I give some taste of those other faults also, for which this noble and grave court doth usually deliver help and correction; wherein I am compelled to be the shorter, seeing that I have neither any written leave whereby to lay them open, nor any access to the memorials of this court itself, which is the only register of those things that fall out in experience within the same. Besides the which, they be variable and infinite in these particular sorts, according to the variable and bottomless draughts and devices of wicked men, out of whose shop they be sent; which consideration constrained the poet to sing,

Non mihi si linguæ centum oraque sint, centum

Ferrea—omnes scelerum comprehendere formas

Omnia pœna, &c.

Howbeit they may be all contained in some of these general bonds that do ensue. For as all the causes of this court be in their own nature criminal and not civil, so also these criminals do proceed (as I have before noted) in these few, whereof these statutes do treat, viz.

Either from fraud or force, or from them both together; and likewise they all be committed, either by publick persons or by private men, and sometimes against the one, and sometimes against the other.

Offences in Officers and private Men, and the Authority to punish as cause requireth.

The misdemeanors of publick men and officers, that are forged out of fraud, be the corruptions of the judges of any court, of the justices of the peace, and of all other judicial commissioners or delegates, who, for covetousness in themselves, or for friendship or hatred towards any of the parties, will put their own fingers into the causes that do hang before them, and will be seen more like to affectionate counsellors or parties, then to upright and indifferent judges.

The private and meaner sort of men wanting the furniture of authority, and fundry other helps wherewith those great ones are apparelled, do beat their brains for the finding out of subtilties and shifts, and do for the most part make traps, and lay hooks for the snaring and intangling of silly and simple men; and hereof spring those mean cozenages, crafty reaches, underminings, devices, subtilt complots, counterfeit drifts, and fraudulent fetches, the eggs whereof they be; these are cherished sometimes by the desire of money, and sometimes by thirst of revenge, but always, or for the most part are hatched by perjury, bribery, and corruption, and are wholly addressed to the discredit of the good name of some, to the loss and hindrance of others in their goods or fortunes, and to the great danger and hazard of the life of many a man.

Now to say the truth, it is very meet and just, that if the wicked sort of men shall excogitate any thing with great labour of wit and cunning, so as it may seem they have drawn a quintessence of a mischief, and set abroad a most rare and singular device to the hurt of the good and quiet subject, it is meet and just (I say) that lawful authority itself, which is ordained for the defence of the
one

one, and punishment of the other, should strain the line of justice beyond the ordinary length, and take exquisite revenge upon them for the same.

Wherefore this high court, as it excelleth all other ordinary courts of justice in this, that besides sundry noblemen endued with great wisdom, and learning of many sorts, it hath also the most grave and learned judges of the other courts for their assistance; so is it of all others the fittest to apply new remedies for new diseases, and to whet and exercise the edge of honour, authorities, excellent wisdoms, and gifts of the highest learning, upon such devilish impostors, mischievous sycophants, and dangerous deceivers.

The Defence of publick Persons.

And no less reason is it also, but such good and upright judges, justices, commissioners, officers, and whatsoever other publick persons, as without seeking bye-paths and starling-holes, do walk *Regia Via* in their several callings, and yet nevertheless are assailed by the tongues, oppugned by the forces, or discomforted by the countenances of other men, should fly and resort for refuge to this high court, as to a certain sanctuary and holy anchor, and should there seek the defence of their authority, at the hands of them by whose means and commendation they first received it.

The further Authority of the Star-chamber in things not mentioned in the first Statute.

I might afford out of mine own time and memory some particularity of example for the most part of those sorts of offences drawn into this court by complainants, and sentenced by authority there; but because it is odious to commit names to writing, and I have no sufficient note or warrant out of the register of the court, wherewith to shield myself, I choose rather to forbear, and will now conclude my discourse with a few words concerning the authority that this court hath over these, and the like offenders,

that are not particularly named in either of these two statutes wherewith I first began.

Albeit, the great charter of the liberties of England, the very letters of manumission, as it were, of the people of this realm out of that servitude, wherein the Normans had kept them many years after their conquest, doth in the person of the king, amongst many other freedoms, grant this, viz.

Nullus liber homo capiatur vel imprisonetur, aut disseisatur de aliquo libero tenemento suo vel libertatibus vel liberis consuetudinibus, aut utlagetur aut exulet, aut aliquo alio modo destruatur, nec super eum ibimus nec super eum mittimus, nisi per legale iudicium parium suorum, vel per legem terre, &c.

Hereby the common subject thought himself freed from that absolute authority which the former kings and their council of state had exercised upon him, and that he ought not from thenceforth to be drawn to answer in any cause, except it were by way of indictment, or presentment of good and lawful men, being his peers, or by process made upon writ original, after the way of law. Yet nevertheless, some cases daily creeping out by reason of controversies, for which no law had been provided; for what wisdom of man is there that can foresee what shall be meet in each particular? and some misdemeanors happening also from time to time in the distribution of those laws that were already made, it came to pass that many were enforced to sue to the king's person itself for remedy, who, as he is the chief justice and vicar of God within this realm, so also doth he stand bound to deliver judgment and justice, when it shall be required at his hands. And this could he not evenly and uprightly do without calling the other party, neither had he many times (especially in a new and sudden occurrence) any ordinary writ or process whereby to call him. Of necessity therefore the prince was to resort to his absolute power again, and by his pursuevant or letters, to send for the adverse party, and to proceed to the hearing and determination of the cause, as to his kingly and judicial office appertained; the which that he might the better do,

it was ordained by statute, 28 Edw. I. cap. 5. that the chancellor, and the justices of the king's bench, should follow the king wheresoever he went, to the end that he might have always some near unto him, that were learned in the laws, and able to order such matters as should be brought before him.

Howbeit it was not a long time before the subject, which so hastily fled to the king and his council for succour, was glad with all his heart to retire, and make recourse to the ordinary seat and judge again. The which thing, whether it happened by the chargeable and hard access to the person of the prince, that could not but be many ways busied with greater matters; or by the long delay of justice, that must needs fall during his absence out of the realm upon the occasion of his foreign wars, and other affairs; or by some uneven dealings of his council for want of sufficient knowledge in the laws, whilst happily they would undertake the hearing of matters without the advice of the chancellor and justices; or whether it chanced by all these, or some other means; it needeth not long, or curious matter of record, or writ original according to the antient laws of the land. And to the end that such as used to prefer unto the king any accusations, suggestions, or petitions against other men, might be utterly discouraged and beaten from the same, a law was given by parliament anno 7 Edw. III. cap. 3. & 8. that they should be sent to the king's chancellor, treasurer, and his great council, and there should put in sureties of taliation; that is, to incur the same pain that the other should have had, if the suggestions were proved untrue.

But that point was mollified the next year after, and order taken, that they should be imprisoned until they had made full agreement with the party molested, and fine and ransom to the king.

Finally, by the statute 17 Rich. II. cap. 6. it was referred to the chancellor alone to award damages by his discretion, against any person, that should make an untrue suggestion against another before the king's council.

This

This authority he exercised many years together, until at length his writs of subpœna flew so thick abroad, for matters determinable at common law, that he was charged to exceed the bounds of the authority committed unto him.

So that the parliament anno 15 Hen. VI. cap. 4. forbad that any subpœna should be granted, until sureties were found to pay unto the party grieved, both his damages and expences, if the matter could not be made good which was contained in the bill against him. And thus it may at once appear, both how hard a thing it is for great men, arrayed with high authority, to maintain themselves within the prescribed limits and pale of power; and also how impatient the common man of this realm hath always been to have his causes determined either at the council board without open hearing, or by absolute jurisdiction, without ordinary rule of proceeding.

In either of which cases, he is very jealous of evil weight, and hard measure in the former; because he is persuaded that as his controversy is not at the first taken from the ordinary trial, and drawn to the council board without the special labour of his adversary, and for great favour shewed unto him; so he feareth, that the same good will being once planted, will continually possess the place, and prove prejudicial for him, even to the end of his suit and business; the rather, because he is not openly heard and sentenced; a thing, that above all others, bridleth those affections that commonly break forth in secret.

In the latter, because, when he is to be judged by an irregular and absolute authority, he findeth himself utterly destitute of all council and advice, which way to turn him, since no man can assure him beforehand, what will be the consciences and discretions of his judges, where the issue may be foretold in the said controversies that come to determination by ruled law and bounden jurisdiction; and therefore the high and sacred wisdom of the parliament thinking it meet, that equal law should be delivered, hath left to the council-board the managing of those matters that are of state, and hath committed the decision of private

controversies and distribution of common justice, to sundry courts of ordinary resort, and regular authority; but yet with this caution, that even as in the necessity of civil cases and calamities of that kind, recourse may be had to the chancellor for aid against the rigor of the common law. So likewise in criminal matters, where the evil is either new in device (for which no law hath hitherto been provided) or doth surmount the common growth, so as standing law hath not reach or condign punishment for it there; help and supply is to be sought in this court of the Star-chamber, before their honours who are put in trust with it.

And now, although these acts of parliament before recited do specially and namely deliver power over these right offences, and none other; yet doth this court, lawfully as it seemeth, take knowledge of all other crimes that be of the same kind, and like dangerous example; partly by virtue of the chancellor, treasurer, and chief justice of the realm, who are the greatest officers of justice that we have, and to the wisdoms and discretions of whom sometimes together, and some times a-part, sundry laws have been submitted for the correction of many offences; partly by the usage of this court itself, which, since the making of the said recited statutes, hath commonly received such complaints and partly also; by the equity of the sole, and secret meaning of the same statutes; which being most wholesome laws, and made for suppressing of superlative mischiefs, and such as do overtop the rest, cannot but be thought under the names of these few, to comprehend all others that do offer the like hurt, or do threaten equal danger with them.

For proof of the first part, I have already noted some statutes, and the volumes of the acts of parliament will afford a great many more, which I will not stand to recite. And for confirmation of the second and third points, not I, but the statute made in the fifth year of the late queen Elizabeth against perjury, shall speak on this behalf.

For

For after that it hath committed the correction of perjury to the consideration of those in the severall courts in which it shall happen to be made, and to the justice of assize of goal delivery, and of the peace, it hath these words following, viz. "Provided always, that this act shall not extend to restrain the power given by acts of parliament made in the time of king Henry the seventh, to the lord chancellor of England, and other the king's council, to examine and punish riots, routs, heinous perjuries and offences, and misdemeanors, which the lord chancellor, and they since the making of that act, have most commonly used, to hear and determine such matters in the court at Westminster, commonly called the Star-chamber; but that they shall and may proceed in the punishment of all offences heretofore punishable, in such wise as they might have done and used to do before the making of this act." Out of which words, these three things are plainly (as it seemeth) to be collected, viz.

First, That this court of Star-chamber took her first ordinary power by that act of king Henry the seventh from which I have before deduced it.

Secondly, That routs and heinous perjuries are by this statute of the said late queen construed to be within the meaning of that act of king Henry the seventh; and yet that act hath never a word of routs nor of heinous perjuries, otherwise than by implications, that jurors are perjured when they take money to say their verdict.

Thirdly, That this court hath used to hear and determine such matters, are as I think not only these very offences which be particularly and literally named in that first statute; but also such other matters and offences as do tend to the like end and evil with them.

And albeit, I know that judge Dyer in his collection, reporteth a strange opinion, that this case of perjury is not subject to the examination and order of this Star-chamber court; yet forasmuch as it appeareth by the self-same report, that the lords of this court advised thereof, and yielded not

unto

unto it; I also can be contented to expect some further resolution before I change my former assertion.

This is all, which for this time and service, I purposed to say of this most honorable court, the beams of whose bright justice do blaze and spread themselves as far as the realm is long and wide, and by the influence of whose authority all other the courts of law and justice are both the more evenly managed, and the more surely stayed up and maintained.

And now I will set down the fees due to the officers of that court, viz.

The clerk of the court being intituled chief clerk of the council of state.

Imprimis, from his majesty by letters } xxvj l. xiiij s. iiij d.
patents yearly

Item, two livery gowns, one of Damask, and the other of wrought velvet }

Item, for a warrant upon every bill ij s.

Item, for every affidavit for serving of process ij s. iv d.

Item, for every affidavit for impotency or excuse of appearance } ij s. iv d.

Item, for the copy of every affidavit ij s.

For the Warrant for every of these.	{	Subp. ad faciend. melior respons. bill	}	ij s.
		Ad faciend. melior respons. interr.		
		Ad rejuvnuend.		
		Ad injunguend. in com.		
		Ad audiend. judicium		
		Ad solvend. expens.		
		Als. attach.		
		Als. attach. cum proclamat.		
		Renewed com. rebell.		
Renewed com. ad examinand. testes	}	ij s.		
			Renewed dedimus potestatem	

The warrant for every attachment for affidavit ij s. iv d.

For the War- rant for every of these.	Attachment granted in open court	
	Attachment for want of answer	
	Attachment for want of examination	
	Attachment with proclamation	
	Commission of rebellion	
	Superfedeas	
	Habeas corpus	iijs. iv d.
	Ne exeat regno	
	Certiorari	
	Writ of privileges	
For the War- rant for every of these.	Duces tecum	
	Injunction	
	Com. ad examinand. test. ded. pot.	iijs. x d.
	Ad inquirend. de damagiis	
	For every name in a dedimus potestatem	ij s.
	For the appearance of every defendant	ij s.
	For the examination of every defendant	iv s. viij d.
	For the examination of every witness	ij s. iv d.
	For the copies of all examinations in court <i>per sheet</i>	xij d.
	For all copies made by the attornies <i>per sheet</i>	vj d.
	For entry of every rule	xij d.
	For entry of every case in the general book of hearing	xij d.
	For the entry and copy of every order not exceeding one side	iijs.
	If more, according to the length thereof	
	For the dismissal of every defendant	ij s.
	For all costs and for every pound	xij d.

The attornies fees of the court.

For every two defendants.	iijs. 4 d.
For every sheet of paper copied by them	vj d.

The clerk of the process fees besides the seal.

Subp. attach. attach cum procl.	ij s.
For	

For every commission ad examinandum testes, dedimus potestatem, Superfedeas, Habeas Corpus, ne exeat regno, certiorari, writ of privilege, duces tecum, and injunction, for every one of them	} vj s. viij d.
Commission of rebellion	
	x s.

ESTABLISHED ORDERS,

De Termino Sanctæ Trinitatis, anno xxxviij^o Elizabethæ
Reginæ, Tho. Egerton Domino custode magni sigilli, in
Camera Stellata, &c.

Reasons moving the court to establish the orders following.

FORASMUCH as it appeared by divers and sundry
motions at the bar, that there are many and frivolous
suits preferred maliciously against a great number of her
majesties subjects, for vexation only, which suits the
plaintiffs do not prosecute; whereby the defendants are
forced to an infinite charge in bringing their learned coun-
cel to the bar:

First, To move the court for a peremptory day for the
plaintiff to shew cause, why his matter should not be dis-
missed for want of prosecution.

And secondly, to attend at the peremptory day appointed
upon the first motion, to hear what can be shewed, and
make answer: and whereas the lords, and others of this
most honorable court, in hillary term, in the second year of
her highness's reign, gravely and honorably intending the
ease of the subject in the premises, did especially order, in
respect to all persons as then had put in their answers, the
then last term, to such bills as were exhibited against them,
that if the plaintiffs should not relpy unto the said answers
by the first sitting of the next term, that then the defen-
dants should be dismissed with their costs.

Now this court of a very honorable regard to ease the
intolerable charge of her highness's good and loving sub-
jects, which daily grow and increase, in that behalf hath

thought fit and ordered accordingly, viz. that if the plaintiffs in any bill exhibited or to be exhibited shall suffer the next whole term after answer made to his or their bill, to pass without replication, and shall not reply on the first day of the term then next ensuing; then the said cause to be dismissed with costs, to be assessed by the right honorable the lord chancellor for the time being.

That all and every defendant finding himself aggrieved for want of prosecution after replication, and before publication, shall attend upon the clerk of the council of this court, before any motion in court to be made for the dismissal of any cause for want of prosecution, and thereupon the said clerk calling to him the attornies on both parties, shall examine the state of the same cause, and how lately the plaintiff hath proceeded therein; and so many as he shall find not to be prosecuted within three whole terms, that then every such cause shall be dismissed with costs, to be taxed as aforesaid, unless the plaintiff shall in the next term following shew good cause to the contrary in open court.

That every defendant finding himself aggrieved for want of prosecution after publication, shall likewise attend upon the clerk of this court, before any motion be made in open court, for the dismissal of any cause for want of prosecution after publication, to examine the state of the same cause in the presence of the attornies on both sides, and as many as he shall find not to be entered in the general book of hearing for judgment, within three terms after publication, shall likewise be dismissed with costs, to be taxed as aforesaid, unless the plaintiff shall the next term following shew good cause to the contrary in open court.

That no plaintiff having served any of the defendants named in his bill with process, shall have any subpoena upon the same bill against any other to answer, after one term past after the exhibiting of his bill, unless the plaintiff take out process against such defendant upon the exhibiting of his bill, and that affidavit be made, that the plaintiff did his best endeavour to cause the said process to be

be served, but could not serve the same : that in such cases the defendants served may proceed, as though the other not served had not been named in the bill ; that all procefs shall be sued out within ten days after the bill is exhibited.

That no plaintiff after procefs sued out upon his bill, shall add any more names into his bill without special warrant by the lord chancellor.

That neither the clerk of the court, nor any other officer, shall take any new fee more than hath been antiently used.

Provided always, that these orders shall not exclude the king's attorney, on the behalf of the king, to prosecute any cause so dismissed.

N^o XXXIX.

Of the Antiquity of Barons.

By Mr. AGARDE.

I Do not read that the noblemen of this realm of England were in any antient charters called by the name or title of Barons, before the coming in of the Normans. And although king Edward the Confessor brought into this land sundry of the Norman laws (as one who had been brought up in Normandy) yet I cannot find the name of Baron in any of his charters, of which I have three in Latin made to Westminster-Abbey, and many others written in the Saxon tongue ; but in none of them doth the name of Baron occur ; but instead thereof, *all my Theignes* ; so that it may be fairly concluded, that the name of Baron was not used in England for the nobility in the times preceding the conqueror. Moreover in all the books written in the reigns of all the antient kings before the conquest, it may be observed, that after dukes and earls were named, then

then cometh in the next degree *Clito et Minister*. The conqueror directed his writs and charters *Gulielmus rex Anglia omnibus Baronibus meis in Kent, Francis, Anglis, &c.*

In Domesday book I find them named but in two places, the one in the town of Warwick, where are these words, *In Burgo de Warwick habuit rex, in dominio 113 domus, et Barones regis habent 112*, the other I will vouch after.

I have seen the inrollment of some charters and grants made by the great earls which he created after and at the conquest, and therein find that they did use the name of Barons. Henry de Ferrariis, in the foundation charter of Tutbury, expresseth himself thus; *Omnibus Baronibus meis tam Francis quam Anglis*; also Hugh Lupus earl of Chester hath his Barons, of whose seats, in his parliament held there, some monuments remain in the castle of Chester.

Dignity.

The Barons had a double authority, the one for the wars, in which they were to be ready with their power to resist or invade as they should be called on by the prince; the other for peace, first, to see it preserved every where in their several baronies, and for which purpose they kept their courts, which to this day are called Court Barons; and secondly, to try, judge, and examine all manner of controversies betwixt party and party, as is in the book of Domesday set down in these words, under the title Somersetshire, in the town of Crediton. *Insuper T. R. Willi diracionavit coram Baronibus regis esse suam terram*; and also to determine the law in the king's exchequer. In the laws of Canutus as published by Mr. Lambard, where he describes a preacher, and how he ought to behave himself in integrity of life, it is set down, that if he live virtuously and chastly; *Dei miserecordiam consequatur et honorem seculi sitque virronis privilegio dignus*; and my commentary over that word *Virronis* setteth *Baronis*. In the same laws I find a double sort of *Virrones* quoted with Barons; for in that part where it is declared, what duties and armor ought to be paid to the king after the death of a nobleman, which he calleth *Exercituala*, after he hath declared

what an earl ought to answer, he useth these words ; *Primo Virronis, i. e. Baronis, vero regi qui ei proximus dignitate est, quatuor equi, duo cum sellis, duo sine sellis ; duo gladii ; quatuor Lancei et totidem scuta, galca, et lorica nec non et 50 mance auri. Minoris autem virronis, equus, apparatus ejus, & armatura illius, aut collicipium ejus apud West-sexam, et apud Mirten, duæ libræ, et apud orientales Anglos, duæ libræ, et virronis exercitualia ; apud Danos qui suum privilegium habet, quatuor libras.* So as it seemeth the Barons held all by knights service, and paid these things as heriots, or reliefs, after their deaths, to the king.]

Barons are not to be put upon juries of assize, or quests of inquiry of the death of any man, by coroners, escheats, or other inquisitions, and thereupon to take oath, as appeareth by a pleading thereof made in the first time where they refused *manum ad librum apponere*. They are to try their peers, and to be tried by them, in cases of treason, only upon their honor ; they are not to be outlawed for debt, or their bodies to be arrested for debt, but their lands are to be summoned, as appeareth by the Black book, in the second part thereof.

Privileges.

They may carry a banner displayed in the field, which inferior persons cannot do.

They have authority next under the king to make laws as lords temporal.

And yet I find that they ought (and have done) to yield to the king an oath for their allegiance after the death of their ancestors, wherein I remit myself to the records of the chancery ; also in the Barons wars in all compositions made betwixt the king and them, they were sworn, as many authors affirm.

In a treaty of peace betwixt the king of England, and the king of Scotland ; I have seen an instance where both the kings were present at the time of its being concluded, and neither of them were sworn, but instead thereof certain noblemen, almost twenty on a side, were sworn for them, to observe the treaty, which treaty I shall shew to this company at better leisure.

A. AGARDE.
N° XL.

N^o XL.

Of Forests.

- I. Their Etymology or definition of name.
- II. Their Antiquity.
- III. The Laws thereunto belonging.

By Mr. AGARDE.

IN the xxviiith chapter of the Black-book, which was written in the xxiii^d year of the reign of king Henry the second, as appeareth by the same book, a forest is defined in Latin, thus, *Foresta est tuta ferarum mansio scilicet silvestrium, non quibuscumque in locis, sed certis, et ad hoc idoneis; unde foresta dicitur mutata E in O, quasi ferarum statio.* As the word *Statio* is by Isidorus, in his etimologies, defined a place of stay of ships for a time; even so in like manner the king's deer being out of his forest and hunted, return to their home again for rest, answering to the name of Forest; for they being returned, no man ought to pursue them further by the laws of the forests.

As for the antiquity of forests in England; I read that they were long before the conquest, for saint Edward returning from hunting in the forest of Clarendon, besides Sarisbury, and coming to visit his mother-in-law, was by her order slain whilst he was drinking with her, to the end that her son Ethelred might enjoy the kingdom; we also find that king Edward the Confessor had his forest in Essex, as appeareth by his charter, beginning thus; *Je Edward koning have given of my Forest the keeping, &c.*

That he had likewise a Forest at Windsor appeareth by Doomsday, where it is said, that he changeth with the abbot of Westminster, and giveth him the manor of Baltrichsey, now called Battersey in Surrey, for the Wyndfores where his Forest was.

But

But after the conqueror entered, it appeareth by sundry chronicles, that he converted divers towns in Hampshire to be Forest, and made thereof New Forest, and constituted severe laws to be kept concerning the same.

By these laws of the Forest, it seemeth, that the kings of this realm after the conquest, and before king John's time, had this prerogative to make or put any man's manors or woods to be his Forest; for among the records of the Forests it is presented, that king Henry the first, by the name of Henricus Senex, passing thorough Leicestershire towards Scotland, saw iij staggs in that place where the Forest of Rutland is, now called Lyefield, and finding the place fit to make a Forest, he committed the keeping thereof to one of his servants till his return, when he put over the keeping thereof to one Husculfus; this rather appeareth to be so, because, that king Stephen coming to be crowned after the death of the said king Henry, and the people finding themselves aggrieved with the multitude of Forests, and the rigour of the Forests laws, they moved him to grant redress in that and other things; whereupon he sware to perform three things, among which this was one, *quod nullius clerici seu laici silvas in manu sua retineret sicut Henricus rex fecerat*: but mine author saith, *nil eorum tenuit*. For the laws of the Forests were such as pleased the king to inflict upon the offenders for verte or venery, and not according to the laws of the land; *non justum absolute, but justum secundum legem Foresta*. So that I conclude, that Forests were here in England before the conquest, but that they never were in so great estimation, nor governed with so precise laws, as they were in the times of the conqueror and his sons, who were given (as the Normans for the most part were) to take great delight in hunting.

N° XLI.

Of the Antiquity of Seals.

By Mr. AGARDE.

FIND that there have been two sorts of Seals, the one of of a lesser size, which was used for the most part to seal letters, and from its being worn on the finger or thumb, was commonly called *Annulus*; and another, which was of more estate, and used for sealing writings of commandment, gifts, leagues, and other public instruments. Of the former sort used for sealing letters, we read in the bible, as in Esther chap. iii. v. 10 and 12. *Then the king took his ring from his hand and gave it unto Haman, &c.*—And in the name of king *Ahasuerus*, it was sealed with the king's ring; and again chap. viiith v. 2. *And the king took off his ring which he had taken from Haman, &c.* Likewise in Genesis chap xli, v. 42. we are told, that *Pharaoh took off his ring from his hand, and put it on Joseph's hand.*

After this manner did the Romans use their rings as seals; for when Hannibal had slain Marcellus the consul in an ambush, he took his ring, and counterfeited letters from him to sundry towns, meaning thereby to surprize them; and Cicero writing to his friend Atticus, being consul in the wars, giveth him this advice: *Sit annulus tuus non ut vas aliquod sed tanquam ipse tu; non minister aliena voluntatis, sed testis tue* *. That seals of estate were used by the Jews, we read in Jeremiah chap. xxxii. ver. 11. where it is said; *So I took the book of the possession being sealed according to the law and custom, &c.* Also the kings and other great states in England before the conquest, used seals to their patents or commandments, as appeareth by the grant of king Edgar made to Westminster-abbey anno 968, viz. *Et ut ab omnibus optimatibus nostris & iudicibus publicis & privatis melius ac certius, &c. credatur, mandis*

* Epist. ad Atticum lib. 1. epist. 1.

noſtræ ſubſcriptionibus eam decrevimus corroborari, ut de ſigillo noſtro juffimus ſigillari.

Again, king Edward the ſon of king Ethelred in a charter of his, dated in uſes theſe words; *Ad ultimam cartam iſtam conſcribi et ſigillari juffi*; and in another of his charters he ſaith; *Noſtræque imaginis ſigillo, inſuper assignari fecimus.*

Nº XLII.

The Antiquity of the Word Sterlingorum or Sterling.

By Mr. TATE.

27th November 1590.

IN the ſtatutes of Edward the third mention is often made of this word *Sterling*; and I find in an old ſtatute without date, theſe words, *Quia multorum regum temporibus proviſum fuit, quod Denarius Argenti, ſclt. Sterlingus quoties neceſſitas expoſtulat divideretur in obolo.* Now I cannot imagine that this ſtatute, which is intituled *De Denariis demittendis*, was made ſince the time of king Edward the ſecond, becauſe the ſtatutes of his time and of later kings are very well known, and there are records extant, whereby we may learn where they were made; then, if like proviſion was made in the time of many kings before king Edward the ſecond, it muſt needs follow, that this word was uſed in king Henry the third's time, or before: but I remember not that I have read any thing thereof before king Edward the firſt's time, in the 18th year of whoſe reign, I find that the biſhop of Cheſter had liberties granted to him in the foreſt, in Staffordſhire, for which he acknowledged himſelf to owe the king M. li. *Sterlinge.*

It appeareth by the ſtatute called *Articuli de Moneta*, that the beſt way to know good money from counterfeit

The exposition of the word.

and base coin, is to mark the stamp and impression thereof. At the making of those articles, there was money stamped with the miter, as appeareth article 1. and with lions article 2. which was base and naughty money. And amongst the French crowns we see some have a sun upon them, which are called *Escues soliel*, and some have none. It seemeth therefore very probable to me, that the kings of this realm having diversity of coins, caused those that were of the best alloy to be striked with the print of a star, which either for the smallness thereof was called a *Starling*, or else a *Starleng*, that is, money having on it the form or image of a star; whereto I rather incline, finding other English coins to take their names of their impressions, as certain coins of Edward the first called *Pallehedds*, or *Pollards*. And in the 28th of Edward the first, I find in one record mention made both of *Sterling* money and *Pollard* money, where it is said; *Solvat prior de Okeburne cvij li. Sterlingorum, et habet breve de perdonagione de celiij li. Pollardorum.*

But herein I hold nothing firmly, being ready to subscribe to any opinion carrying with it more probability of reason.

N^o XLIII.

Of Sterling Money.

By Mr. AGARDE.

IN fundry of the kings writs in Henry the third's time, as also in those of king Edward the first, second, and third, of liberate made in French, is used these words *xx l. Sterling.*

In the fines called *Pedes finium*, made in king John's time, and in his 6th, 7th, and 8th years are contained these words, *Et pro hac concordia, &c. Dedit ei viginti libras Esterlingorum.*

The

The like also is used in the fines made in king Henry III. and sometimes *Sterlingorum*; but in the time of Edward the first, and so downwards, always *Sterlingorum*.

I suppose that the name came to us by means of the Esterlinges, who being Germans brought up in the mines of silver and copper there, were used here in England for the reducing and refining the diversity of coins into a perfect standard, as in the beginning of this queen's majesty's reign they were brought hither by alderman Lodge (with whom I was familiarly acquainted) by her majesty's order, for the refining of our base coins; this he told me, that the most of them in melting, fell sick to death with the savour, so as they were advised to drink in a dead man's scull for their re-cure: whereupon he with others, who had the oversight of this work, procured a warrant from the council to take off the heads upon London-bridge, and make cups thereof, out of the which they drank, and found some relief, although most of them died.

per me ARTHURE AGARDE.

N° XLIV.

Of the same.

By Mr. WILLIAM PATTIN.

THE realm of England having small quantity of silver mines, the supply of silver hath always been had out of Germany, where there is great store; and the name of *Sterling* doth properly signify the allay which the Germans and Esterlings first tried, found out, and brought hither. But there is no likelihood that the same was derived from the town in Scotland, for the true name of that is *Estryveling*, and it is at this day called by the name of *Stryveling*, and not *Sterling*.

N° XLV.

N^o XLV.

Of the same.

By Mr. BROUGHTON.

I THINK *Sterling* to proceed from the *Esterlinges*, and that the use thereof was long before the time of king Edward the first, for I have seen an ancient deed dated in the beginning of the reign of king Henry the third, wherein is mention made of so much money *Sterling* paid by one Clemens Comitisse Cestrie et Lincolnie.

Mr. Fleetwood, serjeant at the law, and recorder of London, had an ancient book, in which was mentioned, that our *Sterling* came from the *Esterlinges*, which book I lent to aldermen Martin, now master of the mint, and the same was never yet restored; and it is most like that the *Sterling* allay was first found in Germany, being a place wherein are greater store of silver mines, by means whereof these Germans might and did attain to the first greatest perfection in the trying and fining thereof.

BROUGHTON.

N^o XLVI.

Of the same.

By Mr. JOHN STOWE.

THE word *Sterling* doth signify both the fineness and also the weight; the *Sterling Pence* were first coined, and after them the greatest; the *Esterlinges* were the devisers of this allay, and were also the workmen in our mint, until of late time; and I have seen a book written by a master of the mint, in the time of king Henry the viiith, which describeth the allay, and sheweth that it took the name of the *Esterlinges*,

N^o XLVII.

Of the same.

By Mr. JOSEPH HOLLAND.

KING Edward the first having conquered a great part of Scotland, did cause to be coined the penny, having a cross; which penny might be broken in sunder, and divided into two parts, or into four; the half whereof was called a half-penny, and the quarter a farthing, or fourth part; this he caused first to be coined in the town of Sterling in Scotland, where he had a mint, and of the name of the same town, that penny or coin was called *Sterling*; and this is and hath been the common and received opinion of the people unto this day.

N^o XLVIII.

Of the same.

By ANONYMOUS.

IT may be a question, whether the word *Sterling* do signify the quantity of the coin, or else the quality and allay thereof; and I think, that it signifieth both. Concerning the first, which is the quantity, I find that there were in the time of king Henry the third three kinds of silver coin, that is to say, *Grossum*, called now the groat, *Dimidium grossum*, called the half groat, and *Sterlingorum*, which was Denarius, or the penny, the least of the three. In comparison whereof, the greater being called *Grossum*, it is to be intended that *Sterlingorum* was the least. For the money called *Obulus* in the time of king Henry the third, was no silver, as appeareth by a record, wherein mention is made of a payment of *Quingentas libras sine Obulis*; because that *Obulus* was base money. As concerning the quality, it appeareth that *Sterling* did sometimes signify the allay; for in the time of king Edward the third, the king took order to have florens tried and stamped, how much they were *Sterling*: which

which must needs be understood of the allay. Also in a record of king Edward the third it likewise appeareth, that *Obulum argenteum* was brought out of Venice, where of three *Faciunt unum Sterlingum* : and it further appeareth by record, that Margaret dutchess of Norfolk had licence to melt groats, half groats, and Sterlings; by which it is evident, that there were certain special coins called by that name, and they different from the rest, both in value and quantity. There was great difference in old time, if a man was bound to pay so much *Bona et legalis moneta Anglia*, or else so much *Sterlingorum*; for in the first, the party might make payment of any manner of money current in England, although it were base, but in the other, the payment ought to be of pure money of the Sterling allay. Further I note, that though in some records of Latin and English it be called *Sterling*; yet in the French records of England, it is always called *Esterling*.

N° XLIX.

Of the same.

By Mr. THOMAS TALBOT.

AS the Florentines brought in money out of their country, which was called Floreins, and the money of Byzantium were called *Bezaunts*, so the money named Sterling was first brought into England by Esterlinges, and of them so called; and so was also afterwards, all other money which was of the same allay as the Esterlings brought in. And although the name of Sterling may seem somewhat to differ from Esterling; yet there is greater difference in words of the like derivation: for the place or house now called the steel-yard, was at the first, after the name of those Esterlinges, called the Esterling-yard. But the Sterling money was not first brought in about the time of king Edward the first; for Mathew Paris, a chronicler, that died before the time of Edward the first, maketh mention of *Sterlingorum* and *Esterlingorum* in his book.

No. I.

Of the same.

By Mr. HENRY BURCHYER.

THERE is no likelihood that the king of England would place any mint at Sterling in Scotland, seeing that he never quietly enjoyed the town of Sterling, but with wars; neither is Scotland a place for the invention of fine and pure silver; nor yieldeth any store of that metal, neither any cunning workmen for the trying or purifying thereof, but I rather think that it was brought in by the Esterlinges, and of them so named, and not of the sign of the star: and this is to be noted that in all the fines that are levied of lands, the consideration there is so much *esterlingorum*. For the fabulous derivation of sterling from Stryvelling, in Scotland, is so far from the truth, as the town of Stryvelling is distant from the forest of Hercinia in Germany: but it is most true, that as the alloy or temper of the sterling is perfect and pure, so the love of all men to that metal ought to be tempered with the alloy of moderation and contentment, and not corrupted with insatiable desires; lest, as being moderately used, it is medicinal and cordial to the heart, yet being taken in over great quantity and to full receipt, it becometh rank poison to the soul.

Of the same.

By MICHAEL HENEAGE.

THE name I find in the time of king John, often used as a word known and received from further antiquity, and as concerning the etymology of the word, I hold with the common opinion, that the same was so named of the place from whence it was wonte most com-

monly to be brought hither: namely from such countries as lie easterly from us; remembering that the western known world of old time, was readier to fetch then bring hither any gold or silver.

I suppose it to be a word properly importing the alay of our English money of gold or silver, consisting of pure metal with as little alay or mixture of other metal, as may be.

Item, that whereas there was also current within this realme a coin of base metal; the word Sterling was used to distinguish the good and pure money from the other; and therefore, in all bonds or contracts for the payment of any sum of money, this word *sterlingorum* was used to exclude the said base money, binding the party to yield pure money only; whereas otherwise these words, *legalis moneta Anglia* would have admitted any base coin. The nature whereof, as I observe, to have been for the most part of the smallest quantiry called *obuli*. So were they permitted and used rather for petit and daily traffic of the common people, than for satisfaction of greater sums; and therefore anno 13 H. III. I find in record *de 500 marcis libandis archiepo B. de bona moneta sine obulis*.

Item, I observe further, that among sundry coins current within this realm, being pure Sterling, the smallest and least was one called *denarius*, weighing 32 grains, and being the least piece of coined silver, and by that occasion in common speeche, this word *sterlingus* was taken and used as we use now *denarius*, not unlike to the phrase of our law, taking this word *Freehold* or *liberum tenementum* to imply only a bare freehold, and no inheritance. In like manner this word *sterlingus* doth signify the meanest piece of sterling or silver money; and accordingly anno 2 R. II. I find *quod denarius Anglicanus qui dicitur sterlingus rotundus sit*, &c. also anno 19 a licence was granted by the king to the countess of Norfolk *et A. B. aurifabro, London, quod ipsi grossos dimidios grossos sterlingos ad valor. C. li. fundere, et inde vasa argentea ad usum dicti. Margar. fac.* Also anno 32 E. II. an ordinance was made against certain foreign coins called *Lusburghs*.

Of the Division of Shires.

By Mr. JOSEPH HOLLAND.

THERE hath been sundry divisions of England in time past: Brute is said to have divided it in three parts; and Cæsar doth make mention of four kings to be in Kent: divers small parts were likewise states of themselves. But for the division of England into shires, I find that king Alfred divided it into 38 shires or shares. In the days of king Offa there were found to be in England 39, and at this day there are 40, and 13 shires in Wales; so that in all there are at present 53 shires. The reason why king Alfred did make that division was the better to withstand the incursions of the Danes, that in his time invaded England in divers places; also he divided it into lesser parts, as into hundreds, wapentakes, lathes, and tithings; he provided also that every man should procure himself to be received into *common* tithing, because there were in each of them to the number of ten men, and one of them should be surety for the other's good behaviour. If any one was found to be of so small or base credit, that no man would become pledge or surety for him, he was to be committed to prison lest he might happen to do harm abroad.

JOSEPH HOLLAND.

N^o LIII.

A project touching a Petition to be exhibited unto her Majesty (Queen ELIZABETH) for the Erecting of a Library and an Academy for the Study of Antiquities and History.

[Extracted from the Minute Books of the then Society of Antiquaries.]

1. **T**HE scope of this petition, is to preserve divers old books concerning the matter of History of this realm, original charters, and monuments, in a library to be erected in some convenient place of the hospital of the Savoy, St. Johns, or elsewhere.

2. Secondly, for the better information of all noble men and gentlemen studious of antiquity, whereby they may be enabled to do unto her majesty and the realm, such service as shall be requisite for their place.

3. This library to be intituled *The library of Queen Elizabeth*, and the same to be well furnished with divers ancient books and rare monuments of antiquity, which other wise may perish; and that at the costs and charges of divers gentlemen which will be willing thereunto.

And therefore praying,

That it may please the queen's majesty, to incorporate the persons so studious of antiquity, for the better preservation of the said library, and increase of knowledge in that behalf.

The name of this corporation to be *the academy for the study of antiquity and history founded by Queen Elizabeth*, or otherwise, as it shall please her majesty.

The persons and officers of which this corporation shall consist, viz.

A governour or president, two guardians of the library, yearly to be chosen, and the fellows of the same academy,

out

out of which fellows the governor or president, and guardians are yearly to be elected.

There are divers gentlemen studious of this knowledge, and which have of a long time assembled and exercised themselves therein, out of which company and others that are desirous, the body of the said corporation may be drawn.

That it would please the queen's majesty to grant the custody, and to commit the care of that library to the said corporation, according to such ordinances and statutes, as it shall please the queen's majesty to establish.

That none shall be admitted into this corporation or society, except he take the oath of the supremacy, and to preserve the said library to the best of his endeavour.

That it may please her majesty to bestow out of her gracious library, such and so many of her books concerning history and antiquity, as it shall please her highness to grant for the better furnishing of this library.

Concerning the Place, which it may please her Majesty to appoint for this Library, and the Meeting of the said Society.

The place may be either some convenient room in the Savoy, which may well be spared;

Or else in the late dissolved monastery of St. Johns of Jerusalem, or otherwise where it shall please her majesty. And that there might be ordained in the said letters patents of incorporation, certain honourable persons to be visitors to visit the said society from five year to five year, or as often as it shall please her majesty to appoint.

The Names of the Visitors.

The archbishop of Canterbury, being of the privy-council.

The lord keeper of the great seal.

The lord treasurer.

The lord admiral.

The lord chamberlain.

The principal secretary.

The lord chief justice of England.

Reasons

Reasons to move the Furtherance of this Corporation.

First, because there are divers and sundry monuments worthy of observation, whereof the originals are extant in the hands of some private gentlement; and also divers other excellent monuments, whereof there is no record now extant, which by these means shall have publick and safe custody for use when occasion shall serve.

Secondly, by reason of the care which her majesty's progenitors have had for the preservation of such ancient monuments, as for instance:

King Edward the First, caused and committed divers copies of the records, and much concerning the realm of Scotland unto divers abbeys for the preservance thereof, which for the most part are now perished, or rare to be had, and which private by the dissolution of monasteries is detained.

The same king caused the libraries of all monasteries and other places of the realm, to be purchased for the further and manifest declaration of his title, as chief lord of Scotland; and the record thereof now extant, doth alledge divers leger books of abbeys for the confirmation thereof: the like was done in the time of king Henry the Eighth.

Also when the Pope's authority was abolished out of England by king Henry the Eighth, there was special care had of the search of ancient Books and antiquities for manifestation unto the world of these usurpations of the Pope.

Also there are divers treaties published by authority, for the satisfaction of the world in divers matters publick, which after they are by publick authority printed and dispersed, they do after some time become very rare, for that there is no publick preservation of them; and the like is the case of proclamations.

This society will not be hurtful to either of the universities, for it shall not meddle with the arts, philosophy, or other final studies there professed, for this society tendeth to the preservance of history and antiquity, of which the universities, long busied in the arts, take little care or regard.

A second Discourse touching the Earl Marshals of England.

By Mr. CAMDEN.

3 Nov. 1603.

SOME learned men which have discoursed of offices and magistracies, in respect of some conveniencies in military matters, have thought the office of Marshal in our age to be answerable to that of the *tribuni militum* in the ancient Roman state; and of the *protosfrator* in the late state of the Greek or Eastern Empire. But the name of Marshal now in use, which in process of time hath ascended unto so high a dignity, began at such time as the Goths, Vandals, Franks, and other northern people overflowed Europe, who settling themselves in the provinces of the Romans, liking well their Policy and Government, began not only to imitate the same, but also to translate their titles of civil and military dignities into their own tongues; so they translated, retaining the signification, *limitandus* into *marche-graffes*, *scutati* into *scheld-knights*, *præfectus palatii* into *seneschalk*, *comes stabuli* into *mar stall*, *minister Dei* into *Gods schalk*, *præfectus equitum* into *mar-schalk*. For all they who have lately traced out etymologies do consent, that as *mar* and *mark* signify a horse; so *schalk* signifies a ruler, an officer, or provost. But the French mollified this harsh concurrence of consonants, and have made of *seneschalk*, *Marzbalk*, &c. *seneschal* and *mar-sbal*. This name (albeit happily the office might be) was not in use in this realm in the Saxon government; only they had their *staller*, which by signification and authority of historians, doth seem to be all one with the Constable. But as this name came out of Germany with the Franks into France; so out of France first arrived here with the Normans. And Roger de Montgomery, which was Mar-
shall

shal of the Norman army at the conquest, is accounted the first Marshal of England.

For some years after, there is in histories no mention of this office, until in the confusion under king Stephen, when as Maud Fitz-empress, for strengthening of her part, made Milo, earl of Hereford, and constable of England; so he, for assuring his faction, made Gilbert Clare earl of Pembroke, and Marshal of England, with the state of inheritance, who in respect of his usual habitation at Stryghall, was commonly called earl of Stryghall, in which office, his son Richard, surnamed Strongbow succeeded, who first opened the way to the English for the conquest of Ireland, by whose only daughter and heir, it descended to William Marshal, who had by her five sons, which died all without issue; and five daughters, the eldest of them named Maud, to whom, in the partition was assigned the office of Marshal of England, with the manor of Hampstead Marshal, which, as it is in old records, the Marshals held in *Marsfrugia, sibi per virgami Marschallia*.

This Maud was married to Hugh Bigod earl of Norfolk, whose son Roger, in right of his mother, was Marshal of England, and after him Roger Bigod his nephew by his brother, who incurring the displeasure of king Edward the first, by denying to serve him in Guienne, practising to hinder the king's expedition into Flanders, and dissuading the commons to pay subsidies imposed by parliament in that respect, for recovery of the king's favour surrendered up to the king for ever, both his earldom of Norfolk and office of Marshal of England, which king Edward the second granted to his brother Thomas of Brotherton, from whom it came inheritably to Thomas Mowbray, earl of Nottingham, whom king Richard the second created Earl Marshal of England; whereas in former time, they were stiled only Marshals of England; and so from the Mowbrays to Howards, late dukes of Norfolk. Yet this office hath not so descended without interruption in the aforesaid families, but that upon disfavours and attainders, it hath been oftentimes conferred upon others, as appeareth by

by this catalogue of them, wherein they are set down successively.

The Marshals of England.

Roger de Montgomery, earl of Shrewsbury.

Walter Giffard, earl of Buckingham.

Robert Fitz-Ede, base son of king Henry I.

Gilbert de Clare, earl of Pembroke.

Richard his son, earl of Pembroke.

William Marshall the elder, earl of Pembroke.

William his son, earl of Pembroke.

Richard his brother, earl of Pembroke.

Gilbert his brother, earl of Pembroke.

Walter his brother, earl of Pembroke.

Anselm his brother, earl of Pembroke.

Roger Bigod, earl of Norfolk.

Roger his brother's son, earl of Norfolk.

Roger, lord Clifford.

Nicholas, lord Segrave.

Thomas Brotherton, son to king Edward the first, earl of Norfolk.

William Montacute, earl of Salisbury.

Thomas Beauchamp the elder, earl of Warwick.

Edmund Mortimer, earl of March.

Henry, lord Percy.

John Fitz-Alan, lord Maltravers.

Thomas Holland, earl of Kent, half brother of king Richard the second.

Thomas Mowbray, earl of Nottingham.

Thomas Holland, duke of Surrey.

John Montacute, earl of Salisbury.

Ralph Nevill, earl of Westmoreland.

Thomas Mowbray, earl of Nottingham.

John his brother, duke of Norfolk.

John Holland, earl of Huntingdon.

John Mowbray, duke of Norfolk.

John Mowbray his son, duke of Norfolk.

Richard, son of king *Edward* the fourth, duke of *York* and *Norfolk*.

Thomas Grey, knight.

John Howard, duke of *Norfolk*.

William, marquiss *Berkeley*, and earl of *Nottingham*.

Henry, duke of *York*, son to king *Henry* the seventh.

Thomas Howard, earl of *Surrey*, afterwards duke of *Norfolk*.

Charles Brandon, duke of *Suffolk*.

Thomas Howard, duke of *Norfolk*.

Edward Seymour, duke of *Somerset*.

John Dudley, duke of *Northumberland*.

Thomas Howard, duke of *Norfolk*, restored.

Thomas Howard his nephew, late duke of *Norfolk*.

George Talbot, earl of *Shrewsbury*.

Robert Devereux, earl of *Essex*, descended from *Eva de Breosa*, daughter and co-heir of *William Marshall*, earl of *Pembroke*, by the *Bohuns*, earls of *Hereford* and *Essex*, and from *Ralph Bigod* brother unto *Roger Bigod*, marshal, by *Lacy Verdon* and *Crothull*.

Thomas Howard, earl of *Arundel* and *Surrey*.

Henry Howard, son of *Thomas* aforesaid.

Thomas Howard, son of *Henry*, and duke of *Norfolk*.

Henry Howard, brother of the last *Thomas*, and to the heirs male of his body.

Henry Howard, son of the last *Henry*.

Thomas Howard, the present duke of *Norfolk*.

N° LV.

Of the Antiquity and Etymology of Terms
and Times for Administration of Justice
in ENGLAND*.

Anno 1694.

Of the TERMS in general.

AS our Law-books have nothing to my knowledge of the *Terms*, so were it much better if our Chronicles had as little; for though it be little they have in that kind, yet is that little very untrue, affirming that *William the Conquerour* did first institute them. It is not worth the examining who was *Authour* of this error, but it seemeth that † *Polydore Virgil* (an alien in our commonwealth, and not well endenized in our antiquities) spread it first in print. I purpose not to take it upon any man's word: but, searching for the fountain, will, if I can, deduce them from thence, beginning with their definition.

The terms are certain portions of the year in which only the king's justices hold plea in the high temporal courts of causes belonging to their jurisdiction in the place thereto Definition.

* The meetings of the College or Voluntary Society of Antiquaries, which were discontinued in the year 1604 or thereabouts, being re-assumed in 1614, the members agreed on two questions for their next meeting, one of which was, *Touching the antiquity and etymology of law terms and times for administration of justice in England.* This occasioned Sir Henry Spelman to write the present discourse; but king James the 1st disliking the society from an apprehension that the members intended to intermeddle with matters of state, commanded them to forbear any further meetings. Sir Henry Spelman being thus disappointed of reading his discourse to the society, caused it to be printed. But as the intention of these volumes is to collect together, and lay before the reader at one view, all the several discourses which were written by the most celebrated antiquaries who flourished in the latter end of the sixteenth, and beginning of the seventeenth centuries, and who composed the then College or Voluntary Society of Antiquaries, it is presumed, that the making Sir Henry Spelman's discourse part of this work will not be deemed improper.

† *Deinde constituit [Gulielmus Conquistor] ut quater quotannis, &c.* lib. 9. p. 154. l. 16. &c.

Of the Antiquity and Etymology of Terms and Times

assigned, according to the antient rites and customs of the kingdom.

The definition divides itself, and offers these parts to be considered.

- I. The *Names* they bear.
- II. The *Original* they come of.
- III. The *Time* they continue.
- IV. The *Persons* they are held by.
- V. The *Causes* they deal with.
- VI. The *Place* they are kept in.
- VII. The *Rites* they are performed with.

These parts minister matter for a book at large, but my purpose upon the occasion imposed being to deal only with the *Institution* of the forms, I will travel no farther than the *three* first stages of my division (that is) touching their *Name*, their *Original*, and their *Time* of continuance.

Of the Names of the TERMS.

The word *Terminus* is of the Greek *Τέρμα*, which signifieth the *Bound*, *End*, or *Limit* of a thing, here particularly of the *Time* for law-matters. In the civil law it also signifieth a day set to the defendant, and in that sense doth *Braeton* and others sometimes use it: *Mat. Paris* calleth the Sheriff's *Turn*, *Terminum Vicecomitis*, and in the addition to the MSS. laws of king *Inas*, *Terminus* is applied to the hundred-court; as also in a charter of *Henry I.* prescribing the time of holding the court, and we ordinarily use it for any set portion of time, as of life, years, lease, &c.

The space between the terms is named *Vacation*, a *Vacando* as being leisure from law-business, by Latinists *Iustitium a jure stando*, because the law is now at a *stop* or *stand*.

The Civilians and Canonists call Term-time *Dies juridicos*; *Vacation*, *Dies feriales*, days of leisure, or intermission, festival days, as being indeed sequestered from troublesome affairs of human business, and devoted *properly* to the service of God and his church. According to this,

our

our Saxon and Norman ancestors divided the year also between God and the King, calling those days and parts that were assigned to God, *Dies pacis Ecclesie*, the residue allotted to the king, *Dies*, or *Tempus pacis regis*.

Divisum imperium cum Jove Caesar habet.

Other names I find none antiently among us, nor the word *Terminus* to be frequent, till the time of Henry II. wherein *Gervascius Tilburiensis* and *Ranulphus de Glanvilla* (if those books be theirs) do continually use it for *Dies pacis regis*.

The ancient Romans, in like manner, divided their year between their Gods and their Commonwealth, naming their law-days or term-time *Fastos*, because their *Prator* or judge might then *Fari*, that is, speak freely; their vacation or days of intermission (as appointed to the service of their gods) they called *Nefastos*, for that the *Prator* might *Ne fari*, not speak in them judicially.

Ovid. Fastorum Lib. 1.

Ille Nefastus erat, per quem tria verba silentur,

Fastus erat per quem lege licebat agi.

When that the three judicial words

The Pretor might not use,

It was Ne fastus; Fastus then,

When each man freely sues.

The three judicial words were *Do*, *Dico*, *Abdico*; by the first he gave licence, *Citare partem ream*, to Cite the defendant; by the second he pronounced sentence; and by the third he granted execution. This *obiter*.

The word *Term* hath also other considerations; sometimes it is used for the whole space, from the first return to the end of the term, including the day of *Return*, *Essoine*, *Exception*, *Return*, *Brev*. Sometimes and most commonly excluding these from the first sitting of the judges in full court (which is the first day for appearance) and this is called *Full-term* by the Statute of xxxii of Henry VIII. cap. 21. as though the part precedent were but *Semi-term*,

See sect. 3.
cap. 6.

Semi-term, Puifne term, or, Introitus-termini: The words of the Statute are these: *That Trinity-term shall begin the Munday next after Trinity-sunday for keeping the Essoines, Returns, Proffers, and other Ceremonies heretofore used, &c. and that the Full-term of the said Trinity-term shall yearly for ever begin the Friday next after Corpus-Christi-Day.* Here the particulars I speak of are apparently set forth, and the Term declared to begin at the *first* return; by which reason it falleth out that the eight days wherein the court of the Exchequer sits, at the beginning of Michaelmas-term, Hilary-term, and Easter, are to be accounted as *parts* of the Terms, for that they fall within the *first* return: the exchequer having *one* return in every of them, more than the courts of common-law have, viz. *Craftino Sancti Michaelis, Octabis Hilarii, and Octabis or Clausum Pasche*: and it seemeth that Trinity-term had *Craftino Trinitatis* in the self-same manner, before this statute altered it.

Of the Original of Terms or Law-days.

Law-days or *Dies Juridici*, which we call *Terms*, are upon the matter as antient as *Offences* and *Controversies*. God *himself* held a kind of Term in *Paradise*, when judicially he tryed and condemned *Adam, Eve, and the Serpent*. In *all Nations*, as soon as government was settled, some time was appointed for punishing offences, redressing of wrongs, and determining of controversies; and this time to every of those nations was their *Term*. The *Original* therefore of the Terms or Law-days, and the time appointed to them, are like the signs of oblique ascension in astronomy that rise together. I shall not need to speak any more particularly of this point, but shew it, as it farther offereth itself in our passage, when we treat of the time appointed to Terms or Law-days, which is the next and longest part of this our discourse.

Of the Times assigned to Law-matters, called the Terms.

We are now come to the great arm of our division, which spreads itself into many branches, in handling whereof we shall

shall fall, either necessarily or accidentally, upon these points, viz.

I. Of Law-days among the *Ancients*, *Jews*, and *Greeks*.

II. Of those among the *Romans* using choice days.

III. Of those among the *Primitive christians* using all alike.

IV. How *Sunday* came to be exempted.

V. How other *Festivals*, and other *Vacation* days.

VI. That our *Terms* took their original from the *Canon-law*.

VII. The constitutions of our *Saxon* kings, *Edward the elder*, *Guthrun the Dane*, and the *synod of Eanham* under *Ethelred* touching this matter.

VIII. The constitutions of *Canutus* more particular.

IX. The constitutions of *Edward the Confessor* more material.

X. The constitution of *William the Conqueror*. And of *Law-days* in *Normandy*.

XI. What done by *William Rufus*, *Stephen*, and *Henry the second*.

XII. Of *Hilary-term* according to those ancient laws.

XIII. Of *Easter-term* in like manner.

XIV. Of *Trinity-term*, and the long *Vacation* following.

XV. Of *Michaelmas-term*.

XVI. Of the later Constitutions of the *Terms* by the *Statutes of the 51st of Henry III.* and *36th of Edward III.*

XVII. How *Trinity-term* was altered by the *32d of Henry VIII.*

XVIII. And how *Michaelmas-term* was abbreviated by *Act of Parliament 16th Carol. I.*

Of Law-days among the Ancients.

The time allotted to law business, seemeth to have been that from the beginning amongst all, or most nations, which was not particularly dedicated (as we said before) to the service of *God*, or some rites of *Religion*. Therefore, whilst *Moses* was yet under the law of nature, and before the

the positive law was given, he sacrificed, and kept the holy festival with *Jethro* his father-in-law on the *one* day, but judged not the people till the day *after*; some particular instance (I know) may be given to the contrary, as I shall mention, but this seemeth to have been at that time the *general* use.

Greeks.

The *Greeks*, who (as *Josephus* in his book against *Apion* witnesseth) had much of their ancient rites from the *Hebrews*, held *two* of their * *Prytanæan* days in every month for civil matters, and the *third* only for their *Sacra*.

Æschines, in his oration against *Ctesiphon*, chargeth *Demosthenes* with writing a decree in the senate, that the † *Prytanæan* Magistrates might hold an assembly upon the 8th day of the approaching month of ‡ *Elaphebolion*, when the holy rites of *Æsculapius* were to be solemnized.

Romans.

The *Romans* likewise (whether by *instinct* of nature or *precedent*) meddled not with law causes during the time appointed to the worship of their Gods, as appeareth by their *primitive* law of the 12 Tables. *Feris jurgia amovento*, and by the places before cited, as also this of the same Tables.

Post semel exta Deo data sunt licet omnia fari,

Verbaque honoratus libera Prætor habet.

When sacrifice and holy rites were done,

The reverend Prætor then his courts begun.

To be short, it was so common a thing in those days of old to exempt the times of exercise of Religion from all worldly business, that the barbarous nations, even our *Angli*, whilst

* Every month had about six more or less of them, so called because on them the *Prytanæan* magistrates might hold court.

† So called from the *Πρυτανιον* where their business was to sit only on things inanimate, as when a piece of stone, timber, or iron, &c. fell on a man, if the party that flung it were not known, sentence was past on that thing which slew him; and the masters of this court were to see that thing cast out of the territories of Athens. See the *Attick Antiq.* l. 3. chap. 3. sect. 4.

‡ The month February, or, as others would have it March, when sacrifices were most usually offered to the goddess *Diana*, *Ελαφεβόλιον* ab *Ελαφεβόλῳ*, cognomen *Dianæ*, quod est, jaculis cervos figens.

they were yet in Germany, the Suevians themselves and others of those northern parts would in no wise violate or interrupt it. * Tacitus says of them, that during this time, *Non bellum ineunt non arma sumunt, clausum omne ferrum; pax & quies tunc tantum nota, tunc tantum amata.* Of our German ancestors we shall speak more anon; our Brits are little to the purpose; they judged all controversies by their Priests the *Druides*, and, to that end, met but once a year, as *Cæsar* sheweth us by those of the *Gauls*.

I will therefore seek the *Original* of our Terms only from the *Romans*, as all other nations that have been subject to their civil and ecclesiastical monarchy do and must.

Of Law-days amongst the ROMANS using Choice-days.

The antient Romans. whilst they were yet heathens, did not, as we at this day, use certain continued portions of the year, for a legal decision of controversies, but, out of a superstitious conceit, that some days were ominous, and more unlucky than others (according to that of the *Ægyptians*.) they made one day to be *Fastus*, or Term-day; and another (as an *Ægyptian* day) to be *Vacation* or *Ne fastus*: seldom two *Fasti* or Law-days together, yea they sometimes divided one and the same day in this manner.

Qui modo Fastus erat, mane Nefastus erat.

The afternoon was Term, the morning Holy-day.

Nor were all their *Fasti* applied to judicature, but some of them to other meetings and consultations of the commonwealth; so that being divided into three sorts, which they called *Fastos Proprie*, *Fastos Intercisos*, and *Fastos Comitiales* they contained together 184 days, yet through all the months in the year there remained not properly to the *Prætor*, as *Judicial* or *Triverbal*-days, above 28; whereas, before the abbreviation of Michaelmas-term by the statute of 16 Car. I. we had in our Term above 96 days in court, and now have 86 besides the Sundays and exempted festi-

* Lib. de Moribus Germ. cap. 40.

† De bello Gallico lib. 6.

De rep.
Ang. lib. 3.

vals which fall in the Terms; and those are about 28 or thereabout. Sir Thomas Smith counts it strange, that three tribunals in one city in less than a third part of the year, should satisfy the wrongs of so large and populous a nation as this of England. But let us return where we left off.

Of Law-days amongst the Primitive Christians, and how they used all times alike.

Lib. 3.

To beat down the Roman superstition touching the observation of days, against which St. Augustine and others wrote vehemently, the Christians at first used all days alike for hearing of causes, not sparing (as it seemeth) the Sunday itself, thereby falling into another extreme; yet had they some precedent for it from Moses and the Jews; for Philo Judæus in the life of Moses reporteth, that the cause of him, that gathered sticks on the Sabbath-day, was, by a solemn council of the princes, priests, and the whole multitude, examined and consulted of on the Sabbath day; and the Talmudists, who were best acquainted with the Jewish customs, as also Galatinus the Hebrew, do report that their judges in the council, called Sanhedrim, sat on the week day from morning to night, in the Gates of the city, and, on the Sabbath, and on festivals, upon the walls. So the whole year then seemed a continual Term, no day exempted: how this stood with the Levitical-law, or rather the moral, I leave to others.

How SUNDAY came to be exempted.

But, for the reformation of the abuse among Christians, in perverting the Lord's day to the hearing of clamorous litigants, it was ordained in the year of our redemption 517 by the fathers assembled in Concilio Taraconensi, cap. 4. after that in Concilio Spalensi, cap. 2. and by Adrian bishop of Rome in the Decretal caus. 15. quest. 4, that, Nullus Episcopus vel infra positus Die dominico causas judicare (aut ventilare) præsumat: No bishop or inferior person presume to judge or try causes on the Lord's day. For it appeareth

peareth by *Epiphanius*, that in his time (as also many hundred years after) bishops and clergymen did hear and determine causes, lest Christians, against the rule of the apostle, should go to law under *Heathens* and *Infidels*.

This Canon of the church, for exempting Sunday, was by *Theodosius* fortified with an *Imperial* constitution, whilst we Britains were yet under the Roman Government; *Solis die, quem dominicum certe dicere solebant majores, omnium omnino litium & negotiorum quiescat intentio.*

Thus was Sunday redeemed from being part of the Term; but all other days by *express* words of the canon were left to be *Dies Juridici*, whether they were mean or great festivals; for it thus followeth in the same place of the * *Decretals*; *Ceteris vero diebus convenientibus personis illa quæ justa sunt habent licentiam judicandi, excepto criminali* (or, as another edition reads it) *exceptis criminalibus negotiis.* The whole canon is *verbatim* also decreed in the *Capitulars* of the emperors † *Carolus* and *Ludovicus*.

How Q T H E R Festival and Vacation Days were exempted.

Let us now see how other festivals and parts of the year were taken from the Courts of Justice. The first canon of note that I meet with to this purpose is that in *Concilio Triburiensi* cap. 35. in or about the year 895. *Nullus comes, nullusque omnino secularis diebus dominicis vel sanctorum in testis seu quadragesimæ, aut jejuniorum, placitum habere, sed nec populum præsumat illo coercere.*

After this manner the council of † *Meldis*, cap. 77. took Easter-week, commonly called the *Octaves*, from law-business; *Pascha hebdomode feriandum, forensia negotia prohibentur.* By this example came the *Octaves* of *Pentecost*, *St. Michael*, the *Epiphany*, &c. to be exempted, and principal feasts to be honoured with *Octaves*.

The next memorable council to that of *Tribury* was the council of *Ertford* in Germany in the year 932, which

* Caus. 15. quæst. 4. cap. 1. † Lib. 6. cap. 245. a *Benedict. Levita.*

† Bin. tom. 3. part. 1. sect. 2. circa annum Christi 845.

though it were then but *Provincial*, yet being afterwards taken by *Gratian* into the body of the cannon-law, it became *General*, and was imposed upon the whole church. I will recite it at large, as it stands in * *Binius*, for I take it to be one of the foundation-stones to our terms. *Placita secularia dominicis vel alijs testis diebus, seu etiam in quibus legitima jejunia celebrantur secundum canonicam institutionem, minime fieri volumus insuper quoque gloriosissimus rex Francorum (Henricus) ad augmentum Christiane religionis concessit,* (or, as † *Gratian* hath it, *Sancta Synodus decrevit*) *ut nulla judiciaria potestas licentiam habeat Christianos sua autoritate ad placitum bannire septem diebus ante Natalem Domini, & à ‡ Quinquagesima usque ad Octavas Pasche, & septem diebus ante Natalem Sancti Johannis Baptistæ, quatinus adeundi ecclesiam orationibusque vacandi liberius habeatur facultas.* But the council of *St. Medard* extant first in § *Burchard* and then in *Gratian* enlargeth these vacations in this manner; *Decrevit Sancta Synodus, ut a Quadragesima usque in Octavam Pasche, & ab Adventu Domini usque in Octavam Epiphaniæ, nec non & in Jejuniis quatuor temporum, & in litiis majoribus, & in diebus dominicis, & in diebus rogationum (nisi de concordia & pacificatione) nullus supra sacra Evangelia jurare præsumat.* The word (*jurare*) here implyeth *Law causes*, or hold plea on these days, as by the same phrase in other laws shall by and by appear, which the *Gloss* also upon this canon maketh manifest, saying, *In his etiam diebus cause exerceri non debent*; citing the other || canon here next before recited, but adding withall, that the court and customs of *Rome* itself doth not keep vacation from *Septuagesima*, nor, as it seemeth, on some other of the days. And this precedent we follow, when *Septuagesima* and *Sexagesima* fall in the compass of *Hilary-term*.

* *Concil. tom. 3. part 1. page 142.* In *statut. concil. cap. 2.* † *Decret. caus. 15. quest. 4. cap. 1.* ‡ *Al Septuagesima.* § *Caus. 22. q. 5. cap. 17.* || *Caus. 15. q. 4. cap. 1.*

That our Terms take their ORIGINAL from the
CANON Law.

Thus we leave the Canon Law, and come home to our own country, which out of these, and such other foreign constitutions (for many more there are) has framed our terms, not by chusing any set portion of the year for them, but by taking up such times for that purpose, as the Church and common necessity (for collecting the fruits of the earth) left undisposed of, as in that which followeth plainly shall appear.

The Constitutions of our Saxon Kings in this Matter.

IN A one of our Saxon kings made a very strict law against working on Sunday.

• Gif þeoƿ mon ƿýrce on sunnan dæg, be his hlafordes hære, sƿ he freo.

If a Servant work on Sunday by his master's command, let him be made free.

And † Alured prohibited many festivals, but the first that prohibited juridical proceedings upon such days, was Edward the Elder and Guthurne the Dane, who in the league between them, made about ten years before the council of Ertford (that it may appear we took not all our light from thence) did thus ordain;

† Ordel 7 aƿer sƿndon toceƿdene. fereolr dagum. 7 suht fæsten dagum.

We forbid that Ordel and Oaths (So they called law-tryals at that time) be used upon festival and lawful fasting days, &c.

How far this law extended appeareth not particularly, no doubt to all festival and fasting-days then imposed by the Roman Church, and such other Provincial as by our kings and clergy here were instituted. Those which by Alured were appointed to be festivals, are now by this law made also days of vacation from judicial trials, yet seem

• Legum cap. 3. † Legum Alured, Cap. 39. ‡ Vide Fridus Edwardi and Guthurni Regum. Cap. 9.

they for the most part to be *Semi-Festivals*, as appointed only to *Freedmen* not to *Bondmen*, for so this * law declareth, viz. the twelve days of *Christmas*, the day wherein *Christ* overcame the *Devil*, the anniversary of *Saint Gregory*, the seven days afore *Easter*, and the seven days after the day of *Saint Peter* and *Saint Paul*, and the whole week before *Saint Mary* in the harvest, and the feast day of *All Saints*. But the four *Wednesdays* in the four *Ember Weeks* are remitted to bondmen, to bestow their work in them as they think good.

The Synod
of Eanham.

To come to that which is more perspicuous, I find about † sixty years after, a canon in our ‡ Synod of Eanham under king *Ethelred* in these words: first, touching Sunday, *⁊ Dominica solennia diei cum summo honore magnopere celebranda sunt, nec quicquam in eadem operis agatur servilis. Negotia quoque secularia quæstionesque publicæ in eadem depa- nantur die.*

Can. 16.

Can. 17.

Can. 18.

Then commanding the feast-days of the *⁊ Blessed Virgin* and of all the *⁊ Apostles*, the fast of the *Ember days*, and of the *Friday* in every week, to be duly kept; it proceeded thus, *Judicium quippe quod Anglice Ordel dicitur, ⁊ juramentum vulgaria, festivis temporibus ⁊ legitimis jejuniis, sed ⁊ ab Adventu Domini usque post Octavas Epiphaniæ, ⁊ a Septuagesima usque 15 dies post Pascha minime exerceantur: Sed sit his temporibus summa pax et concordia inter Christianos, sicut fieri oportet.* It is like there were some former constitutions of our church to this purpose; but either mine eye hath not lighted on them, or my memory hath deceived me of them.

Canutus succeeding shortly after by his Danish sword in our English kingdom, not only retained but revived this former constitution, adding, after the manner of his zeal, two new festival and vacation days.

* See the aforesaid 39th Chapter of the laws of king *Alured*. † It was held between the years 1006, and 1013. See the author's conc. Britan. tom. 1. page 310. ‡ The word Synod here signifies more than council, not as it is usually restrained to that of the clergy only. See Concil. Eanham, can. 15.

And weforbeotað optal. 7 aþ freolp dagum. 7 ymbren dagum. 7
lensten dagum. 7 niht fæstren dagum 7. fram Adventum domini oþre eah
roþa dag;

Canuti'eges
chap. 17.

And we forbid Ordels and Oaths on Feast-days, and Ember-days, and Lent, and set Fasting-days, and from the Advent of our Lord till eight days after [the] twelve [days] be past; and from Septuagesima till fifteen nights after Easter; and the sages have ordained that Saint Edward's day shall be Festival over all England and on the 15th of the kalends of April, and Saint Dunstan's on the 14th of the kalends of June, and that all Christians (as right it is) should keep them hallowed, and in peace.

Canutus following the example of the synod of Eanham, setteth down in the paragraph next before this recited, which shall be Festival, and which Fasting-days appointing both to be days of vacation. Among the Fasting-days he nameth the Saints Eves and the Fridays; but excepteth the Fridays, when they happen to be Festival days and those which come between Easter and Pentecost; as also those between Midwinter (so they called the nativity of our Lord) and Oetabis Epiphania; so that at this time some Fridays were law days, and some were not. Those in Easter term, with the eve of Philip and Jacob, were, and the rest were not. The reason of this partiality (as I take it) was, they fasted not at Christmas, for joy of Christ's nativity, nor between Easter and Whitsontide, for that Christ continued upon the earth from his resurrection till his ascension; and the children of the wedding may not fast so long as the bridegroom is with them; nor at Whitsuntide, for joy of the coming of the Holy Ghost.

Mat. 9. 15.
Mark 2. 19.

The Constitution of EDWARD the CONFESSOR
most material.

Saint Edward the Confessor drew this constitution of of Canutus nearer to the course of our time, as a law in these words; Ab Adventu Domini usque ad Oetabas Epiphania pax Dei & sanctæ ecclesiæ per omne regnum; similiter a Septuagesima usque ad Oetabas Paschæ; item ab Ascensione Domini usque ad Oetabas Pentecostis; item omnibus diebus

Leges Ed.
Conf. c. 9.

Sect. 2.

Quatuor Temporum; item omnibus Sabbatis ab hora nona, & tota die sequenti, usque ad diem Luna; item Vigiliis Sanctæ Mariæ, Sancti Michaelis, Sancti Johannis Baptistæ, apostolorum omnium & sanctorum, quorum solennitates a sacerdotibus Dominicis annuntiantur diebus, & omnium sanctorum in kalendis Novembris, ab hora nona vigiliarum, & subsequenti solennitate; item in parochiis in quibus dedicationis dies observatur: item parochiis ecclesiarum ubi propria festivitas Sancti celebratur, &c. The rubrick of this law is, *De temporibus, & diebus pacis regis*, intimating term-time, and here in the text the vacations are called *Dies pacis Dei & sanctæ ecclesiæ*, as I said in the beginning. But *pax Dei, pax Ecclesiæ, & pax Regis*, in other Laws of Edward the Confessor, and elsewhere, have other significations, also more particular; *hora nona* is here (as in all authors of that time) intended for three of the clock in the afternoon, being the ninth hour of the artificial day, wherein the Saxons, as other nations of Europe, and our ancestors of much later time, followed the Judaical computation, perhaps till the invention and use of clocks gave a just occasion to alter it, for that they could not daily tarry for the unequal hours.

The Constitution of WILLIAM the CONQUEROR.

In Hen. II.
page 600.
Legum Anglo
Saxon.
page 137.

This Constitution of Edward the Confessor was, amongst his other laws, confirmed by William the Conqueror, as not only Hoveden, and those ancient authors testify, but by the Decree of the Conqueror himself, in these words, *Hoc quoque præcipio ut omnes habeant & teneant leges Edwardi in omnibus rebus, ad hæc his quæ constituimus ad utilitatem Anglorum.* And in those Auctions nothing is added, altered, or spoken, concerning any part of that constitution; neither is it likely that the Conqueror did much innovate the course of our term or law days, seeing he held them in his own duchy of Normandy, not far differing from the same manner, having received the customs of that his country from this of ours, by the hand of Edward the Confessor, as, in the beginning of their old Customary, themselves do acknowledge. The words touching their law days or Tryals are these, under

the

the title, *De temporibus quibus leges non debent fieri*; Notandum autem est quod quadam sunt tempora in quibus leges non debent fieri, nec simplices, nec aperta, viz. omnia tempora in quibus matrimonia non possunt celebrari; ecclesia autem legibus apparentibus omnes dies festivos perhibet & defendit, viz. ab hora nona die Jovis, usque ad ortum solis die Luna sequenti, & omnes dies solennes novem lectionum & solennium jejuniorum, & dedicationis ecclesiæ in qua duellum est deducendum. This law doth generally inhibit all judicial proceedings during the time wherein Marriage is forbidden, and particularly all trials by battle (which the French and our Glanvill call *Leges apparentes*, alias *apparabiles*, vulgarly *Loix Apparifans*) during the other times therein mentioned; and it is to be noted, that the emperor Frederick the Second in his Neapolitan Constitutions includeth the trials by Ordeal under *Leges parabiles*. But touching the times wherein marriage was forbidden, it agreed for the most part with the vacations prescribed by Edward the Confessor, especially touching the beginning of them. Of *Dies novem lectionum* we shall find occasion to speak hereafter.

Custom.
cap. 80.

Lib. 4. c. 1.

Lib. 14. c. 2.
Tit. 31.

What done by William Rufus, Henry I. King Stephen, and Henry II.

As for William Rufus, we read that he pulled many lands from the church, but not that he abridged the vacation times assigned to it.

Henry the Ist. upon view of former constitutions, composed this law under the title, *De observatione legis faciendi*, viz. *Ab Adventu Domini usque ad Octabas Epiphaniæ, & a Septuagesima usque ad 15 dies post Pascham, & festis diebus, & Quatuor Temporum, & diebus Quadragesimalibus, & aliis legitimis jejuniis, in diebus Veneris, & Vigiliis sanctorum apostolorum non est tempus leges faciendi, vel jusjurandum (nisi primo fidelitate Domini, vel concordia) vel bellum, vel ferri, vel aquæ, vel leges exactiones tractari, sed sit in omnibus vera pax, beata charitas, ad honorem omnipotentis Dei, &c.*

Alii legunt.
singulorum.
Nisi (primo)
al. pro.

Al. examinationis.

The copy of these laws is much corrupted, and it appeareth by Florence Wigorn's Continuer that the Londoners

Anno Dom.
1143.

refused them, and put *Maud* the empress to an ignominious flight, when she pressed the observation of them; but in this particular branch there is nothing not agreeable to some former constitution. The word *Bellum* here signifieth *Combats*, which among our Saxons are not spoken of, and by those of *Ferri vel Aquæ*, are meant *Ordeal*.

Hist Nov.
lib. 1. page
179.

King *Stephen* by his charter recited at *Malmesbury*, confirmed and established by a generality, *Bonas leges & antiquas, & justas consuetudines*.

In Hen. II.
page 690.

Henry the second expressly ratified the laws of *Edward* the Confessor, and *William* the Conqueror, as *Hoveden* telleth us, saying, that he did it by the advice of *Ranulph Glanvill* then newly made chief justice of England; which seemeth to be true, for that *Glanvill* doth accordingly make some of his *Writts* returnable in *Octavi*, or *clauso Pascha*, where the laws of *Edward* the confessor appoint the end of *Lent* vacation; and *Ogeroncius Tilburiensis* also mentioneth the same return.

Lib. 2. cap.
11.

Dial. de
Scacc.

The Terms laid out according to these ancient Laws.

To lay out now the bounds of the terms according to these canons and constitutions, especially that ancient law of *Edward* the Confessor; it thus appeareth, viz.

Hilary-
term.

Hilary term began then certainly at *Octavis Epiphania*, that is, the thirteenth day of *January*, seven days before the first return is now, and nine days before our term beginneth, and ended at the Saturday next before *Septuagesima*, which being moveable, made this term longer some years than in others. *Florentinus Wigorniensis* and *Walsingham* in his *Hypodigma Neustria* saith,—Anno 1096, in *Octavis Epiphaniae apud Sarisburiam*, rex *Gulielmus Rufus tenuit consilium in quo iussit Gulielmo de Anco in duello victi oculos eruere, & testiculos abscindere & dapiferum illius Gulielmum de Alder, filium amicae illius suspendi, &c.* proceeding also judicially against others. Though *Walsingham* calleth this assembly *Consilium* with an *s*, and *Wigorniensis* *Concilium* with a *c*, (the word term perhaps not being in use in the days of *William Rufus*) yet it may seem to be no other than

Page 441.
lin. 18.

than an assembly of the *Barons* in the king's court of state (which was then the place of justice) to proceed judicially against these offenders; for the barons of the land were at that time the judges of all causes, which we call *Pleas of the Crown*, and of all other belonging to the *Court of the King*; so that the proceedings being *Legal* and not *Parliamentary*, it appeareth that it was then no vacation, and that the term was begun at *Octabis Epiphaniae*; whereby it is the likelier also that it ended at *Septuagesima*, lest beginning it, as we now do, some years might happen to have no *Hilary* term at all, as shall anon appear. And this our ancient use of ending the term at *Septuagesima* is some inducement to think the council of *Ertford* to be depraved, and that the word there *Quinquagesima* should be *Septuagesima*, as the gloss there reporteth it to be in some other place; and as well *Gratian* mistakes this, as he hath done the council itself, attributing it to *Ephesus*, a city of *Ionia*, instead of *Ertford*, a town of *Germany*; where *Burchard* before him, and *Binius* since hath placed it.

It comes here to my mind, what I have heard an old *Chequerman* many years ago report, that this term and *Trinity* term were in ancient time either no terms at all, or but as reliques of *Michaelmas* and *Easter* term, rather than just terms of themselves: some courses of the *Chequer* yet incline to it. And we were both of a mind, that want of business (which no doubt in those days was very little) by reason suits were then for the most part determined in inferior courts, was the cause of it. But I since observe another cause, viz. that *Septuagesima* or Church-time one while trode so near upon the heels of *Octabis Epiphaniae* (I mean came so soon after it) that it left not a whole week for *Hilary* term; and again, another while *Trinity* Sunday fell out so late in the year, that the common necessity of hay seed and harvest, made that time very little and unfrequented.

For inasmuch as *Easter* term (which is the *Clavis*, as well to shut up *Hilary* term, as to open *Trinity* term) may, according to the general council of *Nice* holden

In the year 922, fall upon any day between the 22d of October exclusively; which then was the *Equinoctium*, and the 25th of April inclusively (as the farthest day, that the Sunday following the vernal full-moon can happen upon); *Septuagesima* may sometimes be upon the 18th of January, and then they could not in ancient time have above four days term, and we at this day no term at all, because we begin it not till the 23d of January, which may be six days after *Septuagesima*, and within the time of church-vacation; but what *Hilary-term* hath now lost from the beginning of it, it hath gained at the latter end of *Trinity-term*. And I shall speak more of this by and by.

Easter-Term.

Easter-term, which now beginneth two days after *Quinquagesima Pascha*, began then, as the law of *Edward the Confessor* appointed it, at *Octab.* This is verified by *Glanvill*, who maketh one of his writs returnable thus;—*Summoneo per bonos summonitores quatuor legales milites de vicineto de Stock, quod sint ad Clausum Pasche coram me vel iudiciariis meis apud Westmonasterium ad eligendum supra sacramentum suum duodecim legales milites.* But, as it began then nine days sooner than it now doth, so it ended six or seven days sooner, viz. before the *Vigil* of *Ascension*, which I take to be the meaning of the law of *Edward the Confessor*, appointing the time from the *Ascension* (inclusive) to the *Octaves* of *Pentecost*, with *Ascension-eve*, to be *Dies pacis Ecclesia*, and Vacation.

Trinity-Term.

Trinity-term therefore in those days began as it now doth (in respect of the return) at *Octab. Pentecostes*, which being always the day after *Trinity Sunday*, is now by the *Stat.* of 32 of *Hen. VIII.* appointed to be called *Grassino Trinitatis*. But it seemeth that the *Stat.* 51 of *Hen. III.* changed the beginning of this term from *Grassino Trinitatis* to *Octab. Trinitatis*, and that therefore the *Stat.* of *Hen. VIII.* did no more in this point than reduce it to the former original. As touching

touching the end of this term, it seemeth also that the said Stat. of 51 Hen. III. assigned the same to be within two or three days after *Quindena Sancti Johannis* (which is about the twelfth of July) for that statute nameth no return after.

But, for ought that hindereth by the canons, it is *tantum Terminus sine Termino*: for there was no set Canon or ecclesiastical Law (that I can find) to abridge the continuance thereof till *Michaelmas*-term, unless the seven days next before Saint John Baptist were (according to the canon of *Ertford*) used as days of intermission, when they fell after the *Octaves* of Pentecost, as commonly they do, though in the year 1614 four of them fell within them; and except the Ember-days next after *Holy-rood*; for, *Jejunia Quatuor Temporum*, as well by the laws of *Canutus* and *Edward the Confessor*, as by all other almost before recited, are either expressly or implicitly exempted from the days of law. But when *Trinity-Sunday* fell near the feast of Saint John Baptist, then was the first part of this term so thrust up between those days of the Church, that it was very short; and the latter part being always very late, did so hinder hay-seed and harvest following, that either the course of it must be shortened, or it must still usurp upon the time allotted by nature to collect the *Fruits* of the Earth.

For, as Religion closed the courts of law in other parts of the year, so now doth publick necessity stop the progress of them; following the constitution of *Theodosius*, thus decreeing. *Omnes dies jubemus esse juridicos. Illos tantum manere feriarum dies fas erit, quos geminis mensibus ad requiem laboris indulgentior annus excepit; astivos fervoribus mitigandis, & autumnos fructibus discerpendis*; this is also confirmed in the C. ———— and in *Gratian* with the glosses upon them to which I leave you, but is of old thus expressed by *Statius*, as if it were *ex jure gentium*.

*Certe jam Latia non miscent jurgia leges,
Et pacem piger annus habet, messesque reversa
Dimisere forum; nec jam tibi turba reorum
Vestibulo, querulique rogant exire clientes.*

Cod. lib. 3.
tit. 12. de
Feriis cap.
7.

Tit. de Fe-
riis cap. 5.
Cau. 25.
quæst. 4.
Silvarum
lib. 4. carm.
4. quod in-
scribitur.
Ad Victori-
um Marcel-
lum,

*The Latian laws do no man now molest,
But grant this weary season peace and rest;
The courts are stop't when harvest comes about,
The plaintiff or defendant stirs not out.*

So the Longobards (our brethern as touching Saxon original) appointed, for their Vintage, a particular Vacation of 30 days, which *Paulus Diaconus* doth thus mention; *Proficiscentes autem eo ad villam, ut juxta ritum imperialem triginta*: whereby it appeareth that this time was not only a time of vacation in those ancient days, but also of feasting and merriment, for receiving the fruits of the earth, as at *Nabal's* and *Abshalom's* sheep-shearing, and in divers parts of England at this day. So the Normans, whose terms were once not so much different from ours, might not hold their *Affizes*, or times of law, but after *Easter* and *Harvest* (that is, after the times of holy church and publick necessity) as appeareth by their *Customary*; and forasmuch as the * *Swainmote Courts* are by the ancient Forest-laws appointed to be kept fifteen days before Michaelmas; it seemeth to be intended that harvest was then done, or that in forests little or no corn was used to be sown.

But it is to be remembered, that this vacation by reason of harvest, hay-seed, vintage, &c. was not of so much solemnity as those in the other parts of the year, and therefore called of the civilians, *Dies feriati minus solennes*; because they were not dedicated *Divino cultui*, but *Humana necessitati*: therefore, though law-business was prohibited on these days to give ease and freedom unto *Suiters* whilst they attended on the store-house of the commonwealth, yet was it not otherwise, than that by consent of parties they might proceed in this vacation; whereof see the *Decreta Gregorii*.

* Swainmote or Swaimote (from the Saxon *swain*, i. e. a country clown or freeholder, and *mote* or *gemot* *convantus*) is a Court of Freeholders within the forest. See 3 Henry VIII. chap. 18.

Of Michaelmas Term according to the ancient Constitution.

Michaelmas-term (as the canons and laws aforesaid leave it) was more uncertain for the beginning than for the end. It appeareth by a fine taken at *Norwich* 18th Henry III. that the term was then holden there, and began within the Octaves of Saint Michael; for the note of it is, *Hæc est finalis concordia facta in curia Domini regis apud Norwicum, die Martis proximo post festum sancti Michaelis, anno regni regis Henrici filii regis Johannis 18 coram Tho. de Mulet, Rob. de Lexint, Olivero, &c.* I observe that the Tuesday next after St. Michael can (at the farthest) be but the seventh day after it, and yet it must be a day within the Octaves; whereas the Term * now is not till the third day after the Octaves. But Gervasius Tilburienſis, who lived in the days of Henry II. hath a writ in these words:—*N. rex Anglorum [illi vel illi] vicecomiti salutem. Vide, sicut teipsum & omnia tua diligis, ut sis ad Scaccarium [ibi vel ibi in crastino Sancti Michaelis, vel in crastino Clausi Pasche] & habeas tecum quicquid debes de veteri firma & nova, & nominatim hæc debita subscript. viz. &c.* By which it appeareth that the term in the Exchequer, as touching Sheriffs and Accomptants, and consequently in the other parts, began then as now it doth, saving that the Statute de Scaccario 51 Henry III. hath since appointed, That Sheriffs and Accomptants shall come to the Exchequer the Monday after the feast of St. Michael, and the Monday after the Utas of Easter. So that this time, being neither ferial nor belonging to the Church, may justly be allotted to Term affairs, if the Octaves of St. Michael have no privilege: more of which hereafter.

Dial. Rib. 3.
cap. 3.

Utas, i. e.
Octava, the
eighth day
after any
term or
feast.

The end is certainly prefixed by the canons and laws aforesaid, that it may not extend into Advent; and it holdeth still at that mark, saving that because Advent Sunday is moveable, according to the Dominical Letter, and may fall upon any day between the 26th of November and the 4th of December, therefore the 28th of November (as a middle

* Before the abbreviation by 16 Car. I. chap. 6.

period

period by reason of the Feast and Eve of St. *Andrew*) hath been appointed to it. Howbeit when Advent-sunday falleth on the 27th of *November*, as sometimes it doth, then is the last day of the term (contrary to the canons and former constitutions) held in Advent, as it after shall more largely appear.

The latter Constitutions of the Terms.

To leave obscurity and come nearer the light, it seemeth by the statutes of 51 Henry III. called *Dies communes in banco*, that the terms did then either begin and end as they do now, or that those statutes did lay them out, and that the Statute of 36 Edward III. cap. 12. confirmed that use; for the returns there mentioned are neither more nor fewer, than at this day.

Anno 1614.
in which
year this
tract was
written.

How Trinity-term was altered and shortened.

Trinity-term was altered and shortened by the Statute of 32 Henry VIII. chap. 21. which hath ordained it *quoad sessionem*, to begin for ever the Friday after *Corpus-Christi-Day*, and to continue 19 days; whereas in elder times it began two or three days sooner; so that *Corpus-Christi-Day* being a moveable feast, this term cannot hold any certain station in the year; and therefore in the year 1614 it began on St. *John Baptist's* day, and the year before it ended on his Eve. Hereupon, though by all the canons of the church and former laws, the feast of St. *John Baptist* was a solemn day, and exempt from legal proceedings in courts of justice; yet it is no vacation-day, when *Corpus Christi* falleth (as it did that year) the very day before it: because the statute hath appointed the term to begin the Friday next after *Corpus-Christi-Day*, which in the said year 1614 was the day next before St. *John Baptist*, and so the term did of necessity begin on St. *John Baptist's*-day. This deceived all the prognosticators, who counting St. *John Baptist* for a grand day, and no day in court, appointed the term in their almanacks to begin the day after, and consequently to hold a day longer; so deceiving many by that their error.

But

But the aforefaid *statute* of 32 Henry VIII. changed the whole frame of this term; for it made it begin fooner by a return, viz. *Crastino sancte Trinitatis*, and thereby brought *Octabis Trinitatis*, which before was the *first* return, to be the *second*, and *Quindena Trinitatis*, which before was the *second*, now to be the *third*; and instead of the three other returns of *Crastino Octabis*, and *Quindena Sancti Johannis*, it appointed that which before was *no* return, but now the *fourth* and *last*, called *Tres Trinitatis*.

The altering and abbreviation of this term is declared by the preamble of the statute to have risen out of two causes, one for *health* in dismissing the concourse of people, the other for *wealth* that the subject might attend his *harvest*, and the gathering in the *fruits* of the *earth*. But there seemed to be a *third* also not mentioned in the statute, and that is, the uncertain *station*, *length*, and *returns* of the first part of this term, which, like an *Eccentrick*, was one year near to St. John Baptist, another year far removed from it; thereby making the term not only *various*, but one year *longer*, and another *shorter*, according as Trinity Sunday (being the *Clavis* to it) fell nearer or farther off from Saint John Baptist: for if it fell *betimes* in the year, then was this term very long, and the two *first* returns of *Octabis* and *Quindena Trinitatis* might be past and gone a fortnight and more, before *Crastino Sancti Johannis* could come in; and if it fell late (as some years it did) then would *Crastino Sancti Johannis* be come and past, before *Octabis Trinitatis* were gone out: so that many times one or two of the first returns of this term (for ought that I can see) must in those days *needs* be lost.

How Michaelmas Term was abbreviated by Act of Parliament, 16 Car. I. chap. vi.

The last place our Statute-book affords upon this subject of the limits and extent of the terms, is the Stat. 16 Car. I. cap. vi. intitled, An act concerning the limitation and abbreviation of Michaelmas Term. For whereas by former statutes it doth appear, that Michaelmas-term did begin

in *Octabis Sancti Michaelis*; that statute appoints, that the first return in this term shall ever hereafter be a *die Sancti Michaelis in tres septimanas*; so cutting off no less than two returns from the ancient beginning of this term, viz. *Octabis Sancti Michaelis*, & a *die Sancti Michaelis in quindecim dies*, and consequently making the beginning of it fall a fortnight later than before: wherefore the first day in this term will always be the 23d day of *October*, unless it happen to be Sunday, for then it must be deferred till the day following, upon which account we find it accordingly placed on the 24th for the year 1681. This is all the alteration that statute mentions, and therefore for the end of *Michaelmas-term*, I refer the reader to what our author has said already in the 15th chapter. It may not be amiss, in pursuit of our author's method, to set down the motives of making this abbreviation, as we find them reckoned up in the *Preamble* to that statute. There we find, that the old beginning of *Michaelmas Term*, was generally found to be very inconvenient to his majesty's subjects, both nobles and others: 1st, For the keeping of quarter sessions next after the feast of Saint Michael the archangel: 2dly, For the keeping their leets, law-days, and court barons: 3dly, For the sowing of Land with winter corn, the same being the chief time of all the year for doing it: 4thly, For the disposing and setting in order of all their Winter husbandry, and business: 5thly, For the receiving and paying of rents: 6thly, Because in many parts of this kingdom, especially the most northern, harvest is seldom or never inned till three weeks after the said feast. All which affairs they could before by no means attend, in regard of the necessity of their coming to the said term, so speedily after the feast of Saint Michael the archangel, to appear upon juries, and to follow their causes and suits in the Law.

Other Considerations touching Term-time.

Having thus laid out the frame of the Terms, both according to the ancient and modern constitutions, it remaineth that we speak something of other points properly incident

incident to this part of our division touching *Term-time*, viz.

I. *Why the courts sit not in the afternoons.*

II. *Why not upon some whole days, as on grand-days, double feasts, and other exempted days, and the reason of them.*

III. *Why some law-busines may be done upon some days exempted.*

IV. *Why the end of Michaelmas-term is sometimes held in Advent, and of Hilary-term in Septuagesima, Sexagesima, and Quinquagesima.*

V. *Why the assizes are held in Lent, and at times generally prohibited by the church.*

VI. *Of Returns.*

VII. *Of the Quarta dies post.*

VIII. *Why I have cited so much Canon, Civil, Feodal, and Foreign Laws in this discourse, with an incursion into the original of our laws.*

C H A P. I.

Why the High Courts sit not in the Afternoons.

IT is now to be considered why the High Courts of justice sit not in the *Afternoons*: for, it is said in scripture, that *Moses* judged the *Israelites* from morning to evening. And the *Romans* used the afternoon as well as the forenoon; yea, many times the afternoon, and not the forenoon, as upon the days called *Endotercisi*, or *Intercisi*, whereof the forenoon was *Nefastus*, or *Vacation*; and the afternoon *Fastus* or *Law-day*, as we shewed in the beginning. And the *Civilians* following that law, do so continue them amongst us in their terms at *this day*. But our ancestors, and other the northern nations, being more prone to *distemper* and excess of *diet* (as the canon-law noteth of them) used the forenoon only, lest *repletion* should bring upon them *drowsiness* and *oppression of spirits* according to that of *Saint Jerome*, *Pinguis venter non gignit mentem tenuem*. To confess the truth our *Saxons* (as appeareth

Exod. 18.
14.

Hist. lib. 6.
2.
Chap. 10.
23.

Tit.

Lib. cau.

Archad.
verb.
comes, cap.
3. 15.

Et alia cap.
Car. 6. 4.

by *Huntingdon*) were unmeasurably given to drunkenness; and it is said in *Ecclesiastes*, *Va terra, cujus principes mane comedunt*. Therefore, to avoid the inconvenience depending hereon, the council of *Nice* ordained, that *judices non nisi jejuni judicia decernant*. And, in the council of *Salgunstad* it was afterwards decreed A. D. 1023, *ut lectio Nicani concilii recitetur*, which being done in the words aforesaid, the same was likewise there confirmed. According to this in the laws of *Carolus magnus* the emperor, it is ordained L. lib. 2, *ut judices jejuni causas audiant & discernant*: and again in the *Capitulars Caroli & Lodovici*, *ne platum, Comes habeat nisi jejunus*. Where the word *Comes* according to the phrase of that time is used for *Judex*, as elsewhere we have it declared to the same effect in the *Capitular ad legem Salicam*. And out of these, and such other Constitutions, ariseth the rule of the Canon law, that *Quae a prandio fiunt constitutiones inter decreta non referuntur*; yet I find that causes might be heard and judged in the *Afternoon*; for, in *Capitulars*, lib. 2.—33, and again, lib. 4. cau. 16, it is said, *Cause viduarum, pupillorum, & pauperum, audiantur & definiantur ante meridiem, regis vero, & potentiorum post meridiem*. This, though it may seem contradictory to the constitution aforesaid, yet I conceive them to be thus reconcileable: that the judges (sitting then but seldom) continued their courts both forenoon and afternoon, from morning till evening, without diener or intermission, as at this day they may, and often do, upon great causes; though being risen and dining, they might not meet again; yet might they not sit at night, or use *Candlelight*, *Quod de nocte non est honestum judicium exercere*. And from these ancient rites of the Church and Empire is our law derived, which prohibited our jurors, being *Judices de facto*, to have meat, drink, fire, or candlelight, till they be agreed of their verdict.

It may be here demanded how it cometh to pass, that our judges after dinner do take *Assizes* and *Nisi prius* in the Guildhall of London, and in their circuits; I have yet no other answer, but that ancient institutions are discontinued

often

often by some custom grating in upon them, and changed often by some later constitution, of which kind the instances aforesaid seem to be. For *assizes* were ordained many ages after by Henry the Second, as appeareth by the charter of *Beverly*, *Glanvill*, and *Radulphus*; *Niger* and *Nisi prius*, by Edward the First, in the statutes of *Westminster* 2; though I see not but in taking of them, the ancient course might have been continued, if haste would suffer it.

Why they sit not at all some Days.

Though there be many Days in the Terms, which by ancient constitutions before recited are exempted from law-business, as those of the *Apostles*, &c. and that the § statute of Edw. VI. appointed many of them to be kept holy-days as dedicated, not unto *saints*, but unto *divine worship*, which we also at this day retain as holy-days; yet do not the high courts forbear sitting in any of them, saving on the feast of the *Purification*, the *Ascension*, *St. John the Baptist*, *All Saints*, and the day after (though not a feast) called *All Souls*. When the others lost their privilege, and came to be term days, I cannot find; it sufficeth that custom hath repealed them by confession of the canonists. Yet it seemeth to me there is no provision made for it in the constitutions of our Church under *Isleap* archbishop of *Canterbury*, in the time of *Edward III.* For though many ancient laws and the decretals of *Gregory* the 9th, had ordained *Judicium*, *Strepitum diebus conquiescere feriatis*; yet in a synod then holden, wherein are all the holy days appointed and particularly recited no restraints of judicature or *Forensis strepitus* is imposed, but a cessation only *ab universis servilibus operibus etiam reipublice utilibus*; which, though it be in the phrase God himself useth touching many great feasts, viz. * *omne servile opus non facietis in iis*; yet it is not in that when he instituteth the seventh day to be the Sabbath.

|| 13 Edw. I. cap. 30.
xiii, 21, 25,

§ An. 5 and 6 Edw. VI. cap. 3.

* Lev.

† *Non facies omne opus in eo* [without servile] thou shalt do no manner of work therein. Now the Act of Judicature, and of hearing and determining *controversies* is not *opus servile*, but *honoratum & plane Regium*, and so not within the prohibition of *this* our canon, which being the *latter* seemeth to qualify the *former*. Yea, the canonists and casuists themselves not only *expound opus servile* of *corporeal* and *mechanical* labour; but admit 26 *several* cases, where (even in that very kind) dispensation lieth against the canons, and by much more reason than, with this in question. It may be said that this canon consequently giveth liberty to hold plea and courts upon their festivals in the vacations: I confess that *so* it seemeth; but this canon hath no power to alter the *bounds* and *course* of the terms, which *before* were settled by the Statutes of the Land; so that in *that* point it prevaileth not. Why? But there ariseth another Question, how it comes to pass that the Courts sit in *Easter-term* upon the *Rogation days*, it being forbidden by the council of *Medard*, and by the intencion of divers *other* constitutions? It seemeth that it *never* was so used in *England*, or at least not for *many* ages, especially since *Gregory* the ninth; insomuch that among the days wherein he prohibiteth *forensensem strepitum*, clamorous pleading, &c. he nameth them not. And though he *did*, the glossographers say, that a nation may by *custom* erect a feast that is not commanded by the *canons* of the church. † *Et eodem modo posset ex consuetudine introduci, quod aliqua quæ sunt de præcepto non essent de præcepto, sicut de tribus diebus rogationum, &c.* To be short, I find no such privilege for them in our courts, though we admit them *other* church rites and ceremonies.

Why on some
festivals,
and not on
others.

We must now shew (if we can) why the Courts sitting upon so many ferial and holy-days, do forbear to sit upon *some* others, which before I mentioned; the *Purification*, *Ascension*, *St. John Baptist*, *All Saints*, &c. For in the synod under *Isleep* before-mentioned, no prerogative is given to them above the *rest* that fall in the *terms*, as, namely, *St.*

† Ex. xx. 10, 11. Lev. xxiii. 3.

Tabien. Feria Sect. 10.

Mark and St. Philip and Jacob, when they do fall in Easter-term, St. Peter in Trinity-term, St. Luke (before the late abbreviation by 16 Car. I.) did fall, and St. Simon and Jude doth always fall in Michaelmas-term. It may be said, that although the synod did prohibit only *opera servilia* to be done on festival days, as the offence most in use at that time, yet did it not give licence to do any Act that was formerly prohibited by any law or laudable custom. And therefore if by colour thereof, or any former use (which is like enough) the courts did sit on lesser festivals, yet they never did it on the greater, among which (*majoris cautelæ gratia*) those *opera servilia* are there also prohibited to be done on Easter-day, Pentecost, and the Sunday itself.

Let us then see which are the greater feasts, and by what merit they obtain their privilege that the Courts of justice sit not on them. As for Sunday we shall not need to speak of it, being canonized by God himself. As for Easter and Whitsunday we shall not need to speak of them neither, because they fall not in the terms: yet I find a Parliament held, at least began on Whitsunday. But touching feasts in general, it is to be understood, that the *canonists*, and such as write * *de divinis officiis*, divide into two sorts, viz. *Festa in totum duplicia* & *simpliciter duplicia*; and they call them *duplicia* or double feasts, for that all or some parts of the service on those days were begun *voce duplici*, that is, by two singing-men; whereas on other days all was done by one. Our cathedral churches do yet observe it: and I mean not to stay upon it, for you may see in the § *rationale*, which Feasts were of every of these kinds. The ordinary apostles were of the last, and therefore our Courts made bold with them: but the Purification, Ascension, St. John Baptist, with some others, that fall not in the term, were of the first, and because of this, and some other prerogatives were also called *feſta majora*, *feſta principalia* & *dies novem lectionum* ordinarily, double feasts, and grand days. Mention is made of them in an † ordinance 8 Edw. III. That writs

The differences of festivals.

* Vide Durandi lib. vii. cap. 1. n. 31. § Durand, lib. 7. cap. 1. † *Rast. Excom.* 5.

were

were ordained to the Bishops, to accurse all and every of the perturbors of the Church, &c. every Sunday and double feast, &c. But we must needs shew why they were called *dies novem lectionum*, for so our old *rituale de Sarum* stileth them, and therein lieth their greatest privilege. After the *Arian* heresy against the Blessed Trinity was by the fathers of that time most powerfully confuted and suppressed, the church, in memory of that most blessed victory, and the better establishing of the *Orthodox* faith in that point, did ordain, that upon divers festival days in the year a particular lesson touching the nature of the Trinity, besides the other eight, should be read in their service, with rejoicing and thanksgiving to God for suppressing that heresy: and for the greater solemnity, some † bishop or the chiefest clergyman present did perform that duty. Thus came these days to their stiles aforesaid, and to be honoured with extraordinary musick, church-service, robes, apparel, feasting, &c. with a particular exemption from law-trials amongst the *Normans*, who therefore kept them the more respectfully here in England: *Festa enim Trinitatis* (saith *Belethus*) *digniori cultu sunt celebranda.*

Grand-days
in France.

In France they have two sorts of *Grand-days*, both differing from ours: First, they call them *les grand jours*, wherein an extraordinary Sessions is holden in any circuit, by virtue of the king's commission directed to certain judges of parliament: Secondly, those in which the *Peers* of France hold once or twice a year their courts of sought justice; all other courts being in the mean time silent. See touching this their *loyscean de Seigniors*.

Grand-days
in England.

To come back to England, and our own *Grand-days*, I see some difference in accounting of them: *Durandus*, in his first chapter and seventh book reckoneth the *Purification*, *Ascension*, and *St. John Baptist* to be *Grand-days*, not mentioning *All Saints*; but both he, in his 34th chapter, and *Belethus* in his do call it *festum maximum*, & *generale*, being not only the feast of the apostles and

† *Belethus* Explicat. cap. 158.

martyrs

martyrs but of the Trinity, angels and confessors, as Durandus termeth it. And that honour and duty. *Quod in singulis valet, potentius valebit in conjunctis*. As for the feast of All Souls, neither Durandus nor Beletus, nor any ancient of those times (for they lived above 400 years since) do record it for a festival. But my countryman Walsingham, the Monk of St. Albans, saith, that Simon archbishop of Canterbury in the year 1328, at a provincial council holden at London, did ordain, * *Quod die Parasceve & in commemoratione omnium animarum ab omni servili opere cessaretur*. Surely he mistook it; for neither is it so mentioned in Linderwood, reciting that canon, nor in the ancient copy of the council itself, where the two feasts canonized by him are the Parasceve, and the conception of the Blessed Virgin; yet doubtless, whensoever it was instituted it was a great feast with us, though no where else. For the old Primer Eboracensis Ecclesie doth not only set it down in the calendar for a double feast; but appointeth for it the whole service with the nine lessons; for it is as a feast of the Trinity. And though neither the statute of Edward the Sixth, nor our church at this day doth receive it; yet being formerly a vacation day (as it seemeth) our judges still forbear to sit upon it, and have not hitherto made it a day in court, though deprived of festival rites, and therefore neither graced with robes nor feasting.

The feast also of St. Peter and Paul on the 29th of June was a double feast, yet it is now become single, and our judges sit upon it. I confess I have not found the reason, unless that by canonizing St. Paul, and so leaving St. Peter single, we allow him no prerogative above the other apostles, lest it should give colour for his primacy; for to St. Paul, as one born out of time, we allow no festival either in the statute of Edward the Sixth, or in the almanacks and calendars of our church. And why St. Peter hath it not is the more observable, for that he not only is deprived of the ancient dignity of his apostleship, contrary to the canons (as

The feast of
St. Peter
and St.
Paul.

* Tho. Walsingham, Hist. Angl. page 129.

the other are) but of the privilege given him in that place by pope *Nicholas the Second* in a bull to *Edward the Confessor*, as being patron of the paroch and dedication of *Westminster*, where the terms are kept, and where by right thereof this day was also privileged from court business. Other festivals I enquire not after, as of *St. Dunstan* and the rest that stand rubricate in old calendars, they being abrogated by old canons of our own church, or the statute of *Edward the Sixth*, whereof I must note by the way, that I find it repealed by queen *Mary*, but not revived by queen *Elizabeth* or since. It seemeth that the Statute of the fifth and sixth *Edward the Sixth*, cap. 3. notwithstanding the repeal of it amongst a multitude of others by queen *Mary*, anno 1. session. 2. cap. 2. is revived again, though not by queen *Elizabeth*; yet by 1 *Jacobi*, cap. 25. in these words: *That an act made in the first year of the reign of queen Mary, intituled, An Act for the repeal of certain statutes made in the time of king Edward the Sixth, shall stand repealed.*

St. George's
day.

I am carried from the brevity I intended; yet all this lieth in my way; nor is it out of it to speak a word of *St. George's day*, which sometimes falleth in *Easter Term*, and is kept in the court royal with great solemnity, but not in the court judicial. Though he stood before in the calendar, and was the *English* patron of elder time; yet *H. Chicheley*, archbishop of *Canterbury*, gave him his greatness by canonizing his day to be a double feast and grand day, as well among the clergy as laity; and that both the one and the other repairing to their churches should celebrate it (as *Christmas-day*) free from servile work, in ardent prayers for safety of the king and kingdom. The occasion of this constitution was to excite king *Henry the Fifth*, being upon his expedition for *Normandy*; and this among many holy days was abolished by the statute of fifth and sixth of *Edward the Sixth*. Yet it being the festival of the knights of the garter, it was provided in the * statute, *That the knights might*

* Parag. 7.

celebrate

celebrate it on the 22d, 23d, and 24th of April. Other feasts there were of this nature, as that of St. Winifred on the second of November, which is in effect no day of sitting, but applied to the pricking of Sheriffs.

St. Winifred.

These are vanished, and in their room we have one new memorable day of intermitting court and law-business for a little in the morning, whilst the judges in their robes go solemnly to the great church at Westminster on the fifth of November yearly, to give God thanks for our great deliverance from the Powder Treason, and hear a Sermon touching it, which done they return to their benches. This was instituted by act of Parliament 3 Jacobi, cap. 1. and it is of the kind of those *ferial* days, which being ordained by the emperors, not by the popes, are in canon and civil law called *feriati dies repentini*. I will go no farther among the tedious subtilties of distinguishing days; I have not been matriculated in the court of Rome; and I confess I neither do nor can explain many objections and contrarieties that may be gathered in these passages, some Oedipus or Ariadne must help me out.

The fifth of November.

Why some law-business may be done on days exempted.

In the mean time let us see why some law-business may be done on days exempted, and sometimes on Sunday itself, notwithstanding any thing above-mentioned.

For as in term time some days are exempted from term business, and some portion of the day from sitting in courts; so in the vacation time and days exempted, some law business may be performed by express permission of the canon law, according to that of the * poet in the Georgicks.

Quippe etiam festis quædam exercere diebus

Fas & jura sinunt.

The synod of Medard admitteth matters *de pace & concordia*. The laws of Henry the First matters of concord and doing fealty to the Lord. The decree of Gregory th:

* Virgil, Georg. lib. 1. v. 168, &c.

Ninth, in cases of necessity, and doing piety according to that of * Prosper,

Non recto servat legalia Sabbata cultu,

Qui pietatis opus credit in his vetitum.

The rule is verified by our Saviour's healing on the Sabbath-day. Out of these and such other authorities of the laws ecclesiastical and civil, cited in the Glosses, the canons have collected these cases, wherein judges may proceed legally upon the days prohibited, and do the things here next following :

For matters of peace and concord by reason whereof our judges take the acknowledgement of fines, statutes, recognizances, &c. upon any day, even the Sabbath itself (though it were better then to be forborne).

For suppressing of traitors, thieves, and notorious offenders, which may otherwise trouble the peace of the commonwealth, and undo the kingdom.

For manumission of bondmen : A work of piety.

For saving that which otherwise would perish : A work of necessity.

For doing that, which, time overslipt, cannot be done ; as for making appeals within the time limited, &c.

For taking the benefit of a witness that otherwise would be lost, as by death or departure.

For making the son sui juris ; as if amongst us a lord should discharge a ward of wardship ; all which are expressed in these verses :

Hæc faciunt causas festis tractare diebus,

Pax sectus admissum, manumissio res peritura,

Termina expirans mora festi abesse volentis,

Camque præstatis patriæ jus filius exit.

Or thus, according to Panormitanus ;

Ratione appellationis, pacis, necessitatis celeritatis, pietatis, matrimonii, latrocinii & ubicunque in mora promptum est periculum.

So likewise by consent of parties upon dies feriati minus solennes, viz. harvest, hayseed, &c. as we have said before ; and divers others there are. See the † Glosses.

* Lib. Ep.

† Can. 15. q. 4. Tit. de Feries, c. 5.

Why the end of Michaelmas term is sometimes holden in Advent; and the octaves of Hilary in Septuagesima.

But the terms sometimes extend themselves into the days of the church, which we call *vacation*; as when Advent Sunday falleth on the 27th of November, then Michaelmas term borroweth the day after out of Advent; and when Septuagesima followeth suddenly upon the Purification, Hilary term not only usurpeth upon it, and Sexagesima (which by the president of the church of Rome here before-mentioned it may do) but also upon Quinquagesima, Shrove Tuesday, and Quadragesima itself; for all which there is matter enough in one place or † other already shewn. Yet it is farther countenanced by the statute of 3 Edw. the First, cap. 51. where it is thus provided: *Forasmuch as it is great charity to do right to all men at all times (when need shall be) by assent of all the prelates it was provided, that assizes of Novel Disseisins, Mortdaucester, and Darrein presentment, should be taken in Advent. Septuagesima and Lent, even as well as inquests may be taken, and that at the special request of the king made unto the bishops.* Where it is to be noted, that inquisitions might be taken before this statute within the days prohibited or church time, and that this licence extended but to particulars therein mentioned.

Why assizes are holden in Lent.

It seemeth that by virtue of this statute, or some other dispensation from the bishops, assizes began first to be holden in Lent, contrary to the canons. I find in an ancient manuscript of the monastery of St. Albans, a dispensation of this kind thus entituled;

Licentia concess. justic. reg. de assis. tenend. sacro tempore non obstante.

Pateat universis per presentes nos Richardum (misericordione divinâ) abbatem monasterii Sancti Albani, licentiam &

† As anno 1. 27 & 1. 26 Heveden. p. 663.

poteſtatem

potestatem autoritate presentium dedisse dilecto nobis in Christo Domino Johanni Shardlow & sociis ejus justic. dom. regis assisas apud Barnet (nostræ jurisdictionis exemptæ) die lunæ proximo ante Festum S. Ambrosii capiendas juxta formam, vim & effectum brevis domini regis inde iis directi. In cujus, &c. anno Domini, &c.

Sub magno Sigillo.

Whether this was *before* or after the statute it appeareth not, it may seem *before*, or that *otherwise* it had been *needless*; but I find § Shardlow to be a justice of Oier in *Pickering Forest* 17 Aug. an. 8 Edw. I. If it were *after* it seemeth, the writ to the justices extended to somewhat *out* of the statute, and that this licence was obtained in *majorem cautelam*. But to conclude; although we find not the *reason* of things done in ancient ages, yet we may be sure *nothing* was done against the rule of the church without *special* licence and dispensation. The feast of St. Ambrose mentioned in the licence was on the fourth of *April*, which commonly is about a week or two before *Easter*. And the Abbat of St. Alban having exempt jurisdiction within the province of *Canterbury*, granteth the dispensation to hold assizes in *tempore sacro*, as the rubrick explaineth it, lest the words (*nostræ jurisdictionis exempta*) might be applied to some layick franchise. I assure myself there are *many* of this kind, if they might come to light.

Of the Returns.

Of the *returns* I will not venture to speak *much*, but *nothing* at all of *Essoins* and *exception days*, for that draweth nearer to the faculty of lawyers, wherein I mean not to be *too* busy. The *returns* are *set* days in every term appointed to the sheriffs for certifying the courts what they have done in execution of the *writs* they received from them. And I take it, that in old times they were the *ordinary* days set to the defendants for appearance, every one of

§ In com. ejus.

them

them being a se'nnight after another, to the end that the defendant, according to his *distance* from the place where he was to appear, might have one, two, three, or more of these returns, that is, so many weeks for his appearance as he was counties in distance from the court where he was to appear. This is verified by the law of § *Ethelred* the *Saxon* king in case of vouching upon *Trover*.

G.ƿ he cenne oƿer an ƿcƿna hæbbe an ƿucena ƿýnƿ; ƿif he cenne oƿer ƿna ƿcƿna hæbbe ƿna ƿucena ƿýnƿ; ƿif he cenne oƿer ƿ. ƿcƿna hæbbe ƿ. ƿucena ƿýnƿ; Oƿer eallƿa ƿela ƿcƿna. ƿa he cenne. hæbbe ƿa ƿeala ƿucena ƿýnƿ;

If the vouchee dwell one shire off, let him at first have one week; if he dwell two shires off, let him have two weeks; if he dwell three shires off, let him have three weeks; and for so many shires as he dwelleth off, let him have so many weeks.

The law of * *Henry* the First is somewhat more particular; *Qui residens est ad domum suam summoniri debet de placito quolibet cum testibus. Et si domi non est idem dicatur vel dapifero, vel denique familia suæ libere denunciatur; si in eodem comitatu sit, inde ad septem dies terminum habeat; si in alia sit 15 dierum terminum habeat: & si in tertio comitatu sit, 3 Hebdomadæ; si in quarto, quartæ Hebdomadæ; & ultra non procedit ubicunque fuerit in Anglia, nisi competens eum detineat † sonius; si ultra mare est 6 Hebdomadas habeat & unam diem ad accessum & reeessum maris, nisi vel occupatio servitii regis, vel ipsius agritudo vel || Tempestas, vel competens aliquod amplius respectet.*

The ‡ statute of § || *Marlebridge* cap. 12. foundeth to this purpose; §§ *In assis autem ultimæ presentationis & in placito quare impedit de ecclesiis vacantibus dentur dies de quindenā in quindenā, vel de tribus septimanis in tres septimanas, prout locus fuerit propinquus vel remotus. And again cap. 27. Sed si vocatus, &c. (ad warrantum coram iusticiar. itinerantibus) fuerit infra comitatum tunc injungatur vice-*

§ *Leges Ethelredi* cap. 93. * *Legum Hen. 1.* cap. 41. † *Sonius, MSS. Seld.* || *MSS. Cod. 1.* intempestas.

‡ *This statute was published anno 52 Henry III. anno salut. 1267.*

§ || *The same with Marleborough in Wilts, famous for nothing more than that this parliament was holden there. So Coke Institut. part 2. fol. 123.*

§ § *Coke ut supra fol. 149. hath it thus, Sed si warrantus ille fuerit infra comitatum tunc, &c.*

Of the Antiquity and Etymology of Terms and Times

comiti quod ipsum infra tertiam diem vel quartam (secundum locorum distantiam) faciat venire sicut in itinere justiciar. fieri consuevit. Et si extra comitatum maneat tunc rationabilem habeat summonitionem 15 dierum ad minus secundum discretionem justiciar. & legem communem.

There was also another use of Returns, as appeareth by the *Reformed Customary of Normandy, Artic. 10th*; some of them belonged to pleas of Goods and Chattels, which we call personal actions, as those of *OEtab.* some to pleas of Land and real actions, as those of *Quindena* to *Quindena*. *Nul n'est tenu de respondere de son heretage en mavidre tems que de quinzanie in quinzanie.* The more solemn actions had the more solemn returns, as we see by the * *Stat. Dies communes in Banco*, which I leave to my masters of the Law.

I will not speak of the returns particularly, more than that *OEtab.* is sometimes reckoned by seven days, sometimes by eight; by seven, *excluding* the Feast from which it is counted; by eight, *including* it. And the word is borrowed from the constitutions of the Church, where the seven days following *Easter* were appointed to be ferial days (as we have shewed before) in imitation of the seven days *Azymorum*, following the *Passover*, in the Levitical Law. But in this manner *OEtab. Trinitatis* always includeth nine days, reckoning *Trinity Sunday* for one, by reason the *just OEtabis* falleth on the Sunday following, which being no day in Court, putteth off the Return till the next day after, making Monday always taken for the true *OEtab.* unless you will count these two days for no more than one, as the † *Stat. de anno Bissextili* in the like case hath ordained.

Of the Quarta Dies post.

Touching the *Quartam diem post* allowed to the defendant for his appearance after the day of return; it is derived from the ancient Saxon, *Salique*, French, and German Laws; where it was ordained, that the plaintiff should *per triduum seu amplius adversarium expectare usque ad occasum solis* (which they called *Sol Satire*) as appeareth abundantly

* Anno 31 Hen. III. altered by the Statute of 32 Hen. VIII. cap. 21.

† Anno 21 Henry III.

in their Laws, and in the *Formular* of *Marcellus*, as *Bigonius* notes upon the same: to which also may be added, that which occurreth in *Gratian*, cap. *Biduum vel Triduum*. But the *Original* proceedeth from the ancient custom of the *Germans* mentioned by *Tacitus*; * *illud ex libertate vitium, quod non simul nec jussi conveniunt, sed et alter & tertius dies cunctatione coeuntium absimitur*. He saith *ex libertate*, because that to come at a *peremptory* time, was a note of servitude which the *Germans* despised.

Why I have used so much Canon and Foreign Law in the Discourse, with an incurſion into the Original of our Laws.

I have used much *Canon* and some other *Foreign Laws* in this discourse, yet I take it, not impertinently; for as the *Western* nations are for the most part deduced from the *Germans*, so in ancient times there was a great agreement and affinity in their laws.

—————*Facies non omnibus una,
Nec diversa tamen, qualem decet esse sororum.*

They that look into the laws of our *English Saxons*, of the *Saliques*, *French*, *Almayns*, *Ripurians*, *Bavarians*, *Longobards*, and other *German Nations* about 800 years since, shall easily find, that out of them, and many other manners, rites, and customs of the *Saxons* and *Germans*, is the first part and foundation of our laws, commonly called the laws of *Edward the Confessor*, and common law. Two other parts principally (as from two pole stars) take their direction from the *Canon law*, and the laws of our brethren the *Longobards* (descending from *Saxon* lineage as well as we) called otherwise the *Feodal law*, received generally through all Europe: for in matters concerning the *Church* and *Churchmen*, *Legitimation*, *Matrimony*, *Wills*, *Testaments*, *Adultery*, *Defamation*, *Oaths*, *Perjury*, *Days of Laws*, *Days of Vacation*, *Wager of Laws*, and many other things, it proceeded sometimes wholly, sometimes for the greater part by the rules and precepts of the *Canon law*.

* Lib. de morib. Germanorum, cap. 11.

And in matters touching Inheritance, Fees, Tenures by Knights service, Rents, Escheats, Dower of the third part, Fines, Felony, Forfeiture, Trial by Battle, &c. from the Feodal Laws chiefly, as those that read the books of those laws collected by *Obertus* and *Gerardus* may see apparently; though we and divers other nations (according as befitteth every one in their particular) do in many things vary from them; which *Obertus* confesseth to be requisite, and to happen often among the *Longobards* themselves. I wish some worthy lawyer would read them diligently, and shew the several heads from whence these of ours were taken: they beyond the seas are diligent in this kind, but we are all for profit and *Lucrando pane*.

Another great portion of our Common Law is derived from the *Civil* (unless we will say that the Civil Law is derived from ours); for Dr. *Cowell*, who hath learnedly travelled in comparing and paralleling of them, affirmeth, that no law of any Christian nation whatsoever approacheth nearer to the Civil Law than this of ours: yet he saith, that all of them *generali hujus disciplinæ æquitatē temperantur, & quasi condiuntur*. Had he not said it, his book itself, intituled, *Institutiones juris Anglicani ad methodum, & seriem institutionum imperialium compositæ & digestæ*, would demonstrate it; which *Braeton* also above three hundred years before (right well understanding) not only citeth the *digests* and *books* of the Civil Law in many places, for want of our Common Law; but in handling our Law pursueth the *method, phrase, and matter* of Justinian's institutes of the Civil Law.

When and how these several parts were brought into our Common Law, is neither easily nor definitively to be expressed. Those, no doubt, of the *Canon Law* by the prevalency of the *clergy* in their several ages; those of the *Feodal* by *military* princes, at and shortly after the conquest; and those of *Civil Law* by such of our reverend judges and sages of ancient time, as for justice and knowledge-sake sought instruction thence, when they found no rule

rule at home to guide their judgments by: for, I suppose they in those days judged many things, *ex aequo & bono*; and that their judgments after, as *Responsa Prudentium* among the Romans, and the *Codex Theodosianus*, became presidents of Law unto posterity.

As for the parts given unto Common Law out of the constitutions of our kings since the conquest, and before *Magna Charta*, I refer them (as they properly belong) to our Statute Law, though our Lawyers do reckon them ordinarily for Common Law.

But among these various heads of our Law, I deduce none from the Scots; yet I confess, that if those Laws of theirs, which they ascribe to *Malcolm* the Second, who lived about sixty years before the conquest, be of that antiquity (which I cannot but question) and that our book called *Glanvill* be wholly in effect taken out of the book of their Law, *verbatim* for the greatest part, called *Regiam Majestatem* (for they pretend that to be elder than our *Glanvill*) I must (I say) ingenuously confess, that the greatest part or portion of our Law is come from Scotland, which none I think versed either in story or antiquities will or can admit.

To come therefore to the point; if my opinion be any thing, I think the foundation of our Laws to be laid by our German ancestors; but built upon and polished by materials taken from the Canon Law and Civil Law. And under the capacious name of Germans, I not only intend our Saxons, but the ancient French and Saliques, not excluding from that paternity the Norwegians, Danes, and Normans. And let it not more mislike us to take our Laws from the noble Germans, a principal people of Europe, than it did the conquering Romans to take theirs from Greece; or the learned Grecians theirs from the Hebrews. It is not credible that the Britains should be the authors of them, or that their Laws, after so many transmutations of people and government, but especially after the expulsion (in a manner) of their nation, or at least of their nobility,

gentry, and freemen, the abolishing of their language, and the cessation of all commerce with them, should remain or be taken up by the conquering enemy, who scarcely suffered *one* town in a county to be called as they named it, or one *English* word almost (that I yet have learned) to creep into their language: admit that much of their *servile* and *base* people remained pleased perhaps as well with their new *lords* as with their *old*; can we think that the *Saxons* should take either *Laws* or manners, or form of government from them? but more expressly, *Seneca* speaking of *Claudius* the emperor's having made an absolute conquest of this island.

• *Iussit & ipsum*

Nova Romana

Jura securis

Tremere oceanum.

In th' Ocean Isle new Laws he set,

Which from the Roman Ax were set.

And more plainly, *Herodian* speaking of *Severus* the emperor's going out of this island, † he left (saith he) behind him in that part of the island subject to the Romans his youngest son *Geta*, to administer *Law* and the *Civil* affairs thereof, and some of his ancient friends to be his counsellors, taking his eldest son *Antonius* for his wars against the *Barbarians*.

When the *Romans* conquered this land, they neither removed the inhabitants nor brought any foreigners upon them, other than (to govern and keep them in obedience) some legions of soldiers and small colonies; yet that they made an alteration of their *Laws*, we may see in the *scripture* by the example of *Judæa*; for though *Pompey* obtained the kingdom there, rather by the confederacy with *Hyrcaus*, than by right of conquest (and therefore suffered them to enjoy their rites of religion, with the liberties of

• *Seneca Philosoph. de morte. cl. Casariüs.*

† τὴν μὲν οὖν τὰς τῶν οὐκ ἐν τῇ γῆτι καλούμενον καταλιπόν, &c. *Herodian Hist. lib. 3. cap. 48.*

most

most of their cities); yet it being reduced into a province (as this of ours was) their Laws were so changed, as that by their own confession, *John xviii. 31. It was not lawful for them to put any man to death.* Therefore our Saviour and the two thieves were judged, and suffer'd upon the cross after the Roman manner, not according to the Laws of the Jews (for their Law never inflicted the cross upon any offender) and the punishment of blasphemy, wherewith they charged Christ, was stoning; and the punishment of theft a quadruple restitution, or bondage in default thereof. As for the stoning of Stephen it was not judicial, but tumultuous, an act of fury and against Law: in which course also they thought to have murdered Saint Paul, had not *Lyfias* prevented them, by sending him to his legal trial before *Cæsar's* judgment-seat.

By this we may conceive how the Romans dealt with the Britains touching their Laws; and the story of Saint Alban and Amphybalus somewhat sheweth it: but what Laws soever the Romans made in Britain, the Saxons doubtless swept them all away with the Britains. There is certain proof of it; for *Antonius* made a constitution, that all nations under the Roman empire should be called Romans, and this was done when the northern people brake into the lower parts of Europe, and made their habitation there.

But more plainly, *Seneca* speaking of *Claudius* the emperor's having conquered this Island, as above,

*Iussit & ipsum
Nova Romana
Jura securis
Tremere oceanum.*

*In th' Ocean Isle new Laws he set,
Which from the Roman Ax were fet.*

The old inhabitants whom they expelled not, but lived mingled with, were still called Romans; as we see in the ancient Laws of the *Saliques* and *Burgundians* in *Cassiodorus* and

and others, and their Laws distinguished by the titles of *Lex Barbara* and *Lex Romana*. But here in *Britain* after the Saxons had conquered, we never hear nor find any mention of *Lex Romana*, or of any *Roman*; which sheweth that both *that*, and the Laws of the *Britains* were expelled and driven away together, or that of the *Romans* with the *Romans*, and that of the *Britains* with the *Britains*.

What the Laws of the *Britains* were, it remains at this day to be seen by a model of them, in an ancient manuscript, under the title of * *The Laws of Hoel Dha* (that is *Hoel the Good*) nothing consonant to these of ours at this day, or those of the Saxons in time past. But we find by the *Red Book in the Exchequer*, that the Laws of *Henry I.* do so concur in many things with them of the other nations we speak of, that sometimes he not only citeth the *Salique Law*, and the *Rubuarian* or *Belgique* by name, but deduceth much of the text *verbatim* from them. And we find also a great multitude of words of art, names of offices, officers, and ministers in our Law, common in old time to the *Germans*, *French*, *Saliques*, *Longobards*, and other nations, as well as to our *Saxons*, *Danes*, and *Normans*, but not one to my knowledge that riseth from the *British* tongue; nor do we, to my knowledge, retain any Law, Rite, or Custom of the ancient *Britains*, which we received not from the *Saxons* or *Germans*, as used also by them of old, before they came into *Britain*.

For these few words that are found in our Law *chirographer*, *protonotary*, &c. whereby some argue the antiquity of our Law to be from the *Druides*, whom *Cæsar* and *Pliny* report to have used the *Greek* tongue; it is doubtless, that they came to us from the *Civil* Lawyers, and the one of them being a mongrel, half *Greek* and half *Latin*, could not descend from the *Druides*, who had neither knowledge nor use of the *Latin* tongue.

* These Laws were made by Hoel Dha king of Wales, about the year 940, and since the writing of this tract have been published to the world by our author himself, in the first tome of his *Concilia Britannica*, page 408.

They therefore that fetch our Laws from *Brutus Mut-*
nutius, the *Druides*, or any other *Brutish* or *British* inha-
 bitants here of old, affirming, that in all the times of these
 several nations (*viz. Britains, Romans, Saxons, Danes,*
 and *Normans*) and of their kings, this realm was still ruled
 with the self same customs that it is now governed withal, do
 like them that make the *Arcadians* to be elder than the
Moön, and the god *Terminus* to be so fixed on the *Capito-*
line Hill, as neither mattocks nor spades, nor all the power
 of men or of other gods could remove him from the place
 he stood in.

And thus I END.

N° LVI.

Of Epitaphs.

By Mr. ABRAHAM HARTWELL.

1600.

BECAUSE I am in time the last that was admitted
 into this society, and in hability the least to deliver
 any thing that is worthy of your hearing, I am to crave
 that ye would not expect any matter at my hands, that
 may be any way pleasing unto ye: for besides the many
 difficulties that have arisen unto me, in the very question
 itself, I have found my reading and observation in that
 point to be so slender, as I dare not set down any thing in
 writing that may be thought fit for your knowledge or un-
 derstanding: as namely for example, when I considered the
 subject itself, wherein the chief ground of this cause con-
 sisteth, I could not fully resolve what was meant by the
 word *Epitaph*, which in the very original of the Greek
 seemeth to be *Τὸ ἐπὶ τοῦ Τάφου*, (*i. e.*) whatsoever is upon
 a man's tomb. And so whether it be pillar, armes, or
 devise

devise that is upon a grave or tomb, it may originally be called an *Epitaph*: but respecting the common acceptation of the word, which I take to be an inscription set upon the grave; I relinquished that former and more general signification of the term *Epitaph*, and tied myself to be more particular, which is, any thing that is written on a tomb. Touching the antiquity thereof, although my small reading doth afford me but little knowledge, yet I do not doubt, but that diverse which are to speak after me will clearly prove, that *the Epitaph* hath been used here in England (for to that point am I restrained by the question itself) in the time of the Britons, the Romans, the Saxons, the Normans, and even in all ages until our times; but touching the variety of *Epitaphs*, it is such a large field to walk through, as it is not for so weak limbs (as I have) to run over it in many days, for some are in prose and some in verse; some are long and some are short; some are Latin and some are English; some are grave and some are ridiculous. Of all which sorts, as also of divers and sundry others, if a man should at this present discourse, we should spend a great deal more time than is allowed us for this business: I have been no great traveller, partly in regard of mine own infirmities, and partly in respect of mine attendance elsewhere, and therefore I cannot finish this occasion according to your expectation. Two *Epitaphs* I have only observed which are authentical and of note, because they strain in a high note of singularity; the one for ridiculous absurdity, the other for commendable brevity. The ridiculous is in Lambeth church graven in a wall there, and runneth forsooth in rhyme as extraordinary as ever I heard any; the party I will not touch, but the *Epitaph* itself I will deliver to you, and this it is:

Agnes Tidenham married first to Thomas Marshall, then
To John Manning, lieth buried here; she lived eight
times ten

And full five years; six children by Marshall she had, three
Were sons, the other daughters, of them none living be.

Shew

She

She died the 22d day of March, and in the year
Of our Lord as by the date here written may appear,
Anno Dom. 1583.

Ad funptum Thoma Fulkes.

The other brief *Epitaph* may well compare with that
of Anthony Guevara in his *Epistle*, wherein he hath con-
gested together a number of *Epitaphs* which he highly
commendeth, but above all others, he extolleth one of a
captain, who had engraven on his tomb in the Spanish
tongue; here lieth such a man, *mucho contra sua voluntad*,
and discourseth on it so far as he doth not stick to say,
that *Cesar*, *Pompey*, *Mausolus*, &c. although they had most
magnificent and stately tombs, yet they lay therein, *Mu-
cho contra sua voluntad*. This of mine is of a most
learned doctor, who deceased in London and lyeth buried
in Cambridge within a College, bearing the name partly of
his own foundation, and hath none other *Epitaph* on his
tomb but only *Fui Caius*, alluding perhaps to *Fuimus
Troes*, and *Fuit Iliu*, but in mine opinion it goeth far be-
yond the *Obituario* of Poules, whereof there was some men-
tion made at our last meeting.

Nº LVII.

Of Castles.

By Mr. JOSEPH HOLLAND.

15th May 1599.

JEFFERY of Monmouth doth make mention of divers
Castles of Stone in the time of the Britons, and of
Thonge Castle, and divers others builded by the Saxons.

Upon the plains of Salisbury there are to be seen divers
great fortifications of earth which are called Castles at this

day; and in Dorsetshire, by Dorchester, there remaineth one very strong fortification of earth on the top of a hill environed with a double ditch of great depth, and it is called Maiden Castle, for that by report of the country it was never won: for the space of ij miles about that Castle do appear divers little hills called Barrows, under the which there hath been found the bones of men, and divers ancient coines: the report of the country is, that after the battle that was fought in that place, these Barrows were erected for monuments unto such as were buried there.

It appeareth in the Book of Doomsday, that William the Conqueror overthrew 48 houses within the city of Exon, in order to erect a Castle in that place.

King Stephen granted licence to all men to build either Castles, Towers, or Holds for defence of themselves upon their own lands, hoping that they would have employed them for his benefit and advantage; but King Henry the Second seeing the inconvenience that grew thereby, caused 1115 of the Castles which were erected in the days of king Stephen to be overthrown and cast down.

At this day few Castles are maintained but such as are in the queen's possession.

Nº LVIII.

Of the Etymology, Dignity, and Antiquity
of Duke or Dux.

Antiquity
with fo-
reign Na-
tions.

IT seemeth it took its name first *a ducendo populum vel exercitum*; and was used among sundry people as *Princeps populi*; and by that name all the expositors of the bible into Latin, as well ancient as modern, have termed sundry Princes arising from Esau's lyne, Duces, as in Joshua also; and I have read in old manuscripts books in English sundry times *Duke Joshua*.

In many old Registers it was common before the conquest. Antiquity with us.

The first I find with us in record is in Henry the third's days, named *Johannes filius Petri Dux Comitatus Richmunde.* Of the name of honour.

It seemeth that our kings did imitate both the emperor of *Almayne* and the French king, where the heads of sundry great houses and Princes of the blood were called by the names of *Dukes*.

Nº LIX.

A further Discourse of Sterling Money.

By THOMAS TALBOT.

STERLING Money taketh his name of the Esterlinges, who used to bring silver into this land of that goodness in value and *poste*; as to this day all our good silver reduced into coin is usually called Esterling or breselie Sterling money, and the Esterlings house in London is by contraction of speech now called Stilyard, and not Esterling yard, and our gold was commonly called Florencies of the Florentines who used to bring coined Gold into this land of such goodness and pureness as our old Royals were wont to be; and therefore they are much deceived that affirm it to take his name of the town of Strivelin in Scotland, and to be coined there in the time of king Edward the First, what time he besieged it; but that town is not called Sterling but Striveling, and so the coin should be called Striveling Money, and not Sterling, if it had taken his name of that place. Matthew Paris, who ended his life in the 43 year of king Henry III. long before the siege of Strivelin, writing of the discord between the French king and king Henry II. anno 1189. fol. 200. at what time the pope sent the cardinal of Aquarrio to make peace between them, hath these words, *Adjunxit insuper rex Francia,*

Ec. desiderabilis Esterlingos regis Anglica, &c. And king John in the first year of his reign, by his charter granted to earl Theobald, *ducentas libras Sterlingorum in Anglia cum Castello.* And the same king in the patent roll, *Anno regni sui sexto*, hath these words, *Assisum est de moneta pro vetus moneta currat unde quolibet libra sit lacta ijs. vi d. ad plus et libra que plus lactaverint, & denarii qui plus lactaverint perforentur & reddantur sicut alias provi- sum fuit. Judei vero aurifabri et mercatores forinseci emant moneta ista victum et vestitum suum tantum, sed usque de- bent prestitum vel mercandisas facere nisi de grosse, & forti moneta que sit de lege et pondere denarii Sterlingi, &c.* It may be gathered by the Black Book in the chequer, that it did take his beginning in the time of king Stephen or king Henry the second, and not before.

N^o LX.

Of Forests.

3d Novembris 1591.

WILLIAM the Conqueror pulled down villages and churches for the space of 30 miles, to make there- of a Forest betwixt Salisbury and the Sea southward, which unto this day is called the New Forest; also he seized the most part of the Forests of England into his own hands, and made a law against those that should kill any of the deer, which was, to have their eyes put out; in which new Forest William Rufus was slain.

N^o LXI.

Of the same.

By RICHARD BROUGHTON.

THE great charter of Forests granted by king Henry III. unto the commonalty, maketh mention of Forests to be made in England by king John, Richard the First, and Henry the Second, and giveth authority to view the same, and to disafforest so much as by them was made Forest, and was not their own demesne; but long before this time was the new Forest made by William the Conqueror, as appeareth by these words, which are in an old English chronicle that I have, William Rous that was William Bastards son who made the new Forest, and cast down and destroyed 26 towns and 80 houses of religion, all for to make his Forest longer and broader, became wondrous glad and proud of his Wood and of his Forest, and of the wild beasts that were therein; but so it befel, that one of his knights, that hight Walter Tyrrel, would have shot at an hart, but his arrow glanced upon a branch, and through inadvertence smote the king to the heart, and so he fell down dead. Mr. Camden makes mention of a Forest in Essex granted by charter of Saint Edward.

Ich Edward king

Have given of my Forest the keeping,

Of the hundred of Chetmer and Dancig,

To Randolph Pepking, and to his kinting,

With harte and hinde, do and bucke, &c.

And Mr. Hoker in his chronicle fol. 207, hath certain laws of the Forest made by Canutus.

N° LXII.

Our certain and definite Topographical Dimensions in
ENGLAND, compared with those of the GREEKS
and LATINS, set down in Order, as they arise in
Quantity.

By Mr. WHITLOCKE.

Græcorum.

Anglorum.

Latinorum.

I. **DACTYLOS**, or
Digitus, the
breadth of a finger.

This is no real mea-
sure in England.

No measure among
the Romans.

II.

YNCHÉ which by
the ordinance of 31
Edward III. is three
grains of barley dry
and round.

UNCIA *est digitus
et tertia digiti pars*,
and this may well be
one ynche, for 12 of
these **UNCIÆ**, make
the **PES**, and so it is
with us in England.

III. **PALMUS**, a
handbreadth, or that
of the four fingers.

No publick measure
in England.

PALMUS minor,
among the Latins is
*mensura, tertia uncia-
rum.*

IV. **LICHAS** *spa-
cium inter judicem et
pollecim*, the space be-
tween top of the fore-
finger and the thumb,
it is accounted Ten
fingers, or **Dactyli**.

No publick measure
with us.

No measure among
the Romans.

V. **ORTHO-**

Græcorum.

Anglorum.

Latinorum.

V. ORTHODORON, the space between the wrist and the top of the fore finger, it is accounted the space of XI Dactyli or Fingers.

No measure in England.

No measure among the Romans.

VI. SPITHAME, in Latin Erdarius, the span between thumb and little finger.

None in England.

Nor among the Latins.

VII. POUS pes, 16 Dactyli among the Greeks.

A FOOT, containing the statute 12 Inches.

PES, spatium unciarum, 12 as in England.

VIII. CUBIT of the Greeks, from the elbow to the top of the middle finger, and this is 24 fingers, or Dactyli.

Not with us.

This measure with the Romans is called SESQUIPES, that is 18 Inches, as much as 24 fingers.

IX. BEMA Gradus.

A Step, no measure.

GRADUS a Step, two pedum & dimidii.

X.

A YARD, containing three feet.

PESTRIPLEK, that is, three feet a just yard.

XI.

An ELL, that is four feet.

ULNA, this is not properly our ell, though we interpret it so, but a fathom.

XII. MURUM the Latin was in length 240 feet, in breadth 120, which hath of ground is 28800 feet, this is used for our acre, but is more ground.

PACE, the stride of a man, by which miles are measured.

PASSUS MINOR, spatium two pedum & dimidii.

PASSUS MAJOR, spatium quinto pedum.

XIII.

Graecorum.

Anglorum.

Latiorum.

XIII. PASSUS, call-
ed Orgy by the Greeks,
a fathom, the space
from the tip of one
middle finger to the
other, the arms being
stretched asunder as
far as may be one from
the other.

XIV.

XV. FATHOM, a
measure of length, the
space from the tip of
one middle finger to the
tip of the other, the
arms being stretched
asunder as far as may
be one from the other.

XVI. PLETHRON,
a measure among the
Greeks of 100
cubits, or 128
feet.

XVII.

XVIII. STADION,
a measure among the
Greeks of 600
cubits, or 840
feet.

XIX.

XX. FATHOM, a
measure of length, the
space from the tip of
one middle finger to the
tip of the other, the
arms being stretched
asunder as far as may
be one from the other.

XXI. FATHOM, a
measure of length, the
space from the tip of
one middle finger to the
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arms being stretched
asunder as far as may
be one from the other.

XXII. FATHOM, a
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XXIII. FATHOM, a
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XXVI. FATHOM, a
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XXVII. FATHOM, a
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XXVIII. FATHOM, a
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XXIX. FATHOM, a
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XXX. FATHOM, a
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be one from the other.

XXXI. FATHOM, a
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XXXII. FATHOM, a
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XXXVI. FATHOM, a
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XXXVII. FATHOM, a
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arms being stretched
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XXXVIII. FATHOM, a
measure of length, the
space from the tip of
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tip of the other, the
arms being stretched
asunder as far as may
be one from the other.

XXXIX. FATHOM, a
measure of length, the
space from the tip of
one middle finger to the
tip of the other, the
arms being stretched
asunder as far as may
be one from the other.

TATHOM, a mea-
sure not used with us in
measuring the length
or breadth of grounds,
but the depth of pits,
and in use among sea-
men in measuring ca-
bles, and sounding of
depth.

PERCH, five yards
& dim. 17 feet & dim.

Day work is four
perches, 22 yards, and
70 feet.

ROOD is 10 days
work, 40 perches, 240
feet quadrants, or the
fourth part of an acre.

ACRE, forty perches
in length, in breadth
four, so square it is
160 perch, which is
880 feet, in all there
is of ground 4840 feet.

PACE, the stride of
a man, by which mea-
sure are measured.

JUGERUM, among
the Latins was in length
240 feet, in breadth
120, which hath of
ground in it 28800 feet,
this is used for our acre,
but is more ground.

XXI.

XXII.

XXIII.

XXIV.

XXV.

XXVI.

XXVII.

PASSUS, among the
Latins four cubits, that
is, just as much as the
Greeks six feet.

VI. SPITHAME, the
space between the
thumb and little finger.

VII. POUSS, among the
Greeks a measure of
length, the space from
the tip of one middle
finger to the tip of the
other, the arms being
stretched asunder as
far as may be one from
the other.

VIII. CUBIT, of
the Greeks from the
elbow to the top of the
middle finger, and this
is a cubit, or 18
inches.

IX. HEMA, among
the Greeks a measure
of length, the space
from the tip of one
middle finger to the
tip of the other, the
arms being stretched
asunder as far as may
be one from the other.

X.

XI.

XXI.

XXII.

XXIII.

XXIV.

XXV.

XXVI.

XXVII.

XXVIII.

XXIX.

XXX.

Græcorum.

Anglorum.

Latinorum.

XXI. MILION,
1000 *Passus*.
Romani utebantur.

MILE.

MILLIARE.

Geographi *passu*, *Milliari*.

Architecti *digito*, *palmo*, *pede*.

Rustici *pede*, *passu*, *ætu minimo*, qui erat longus, pedes 120, latus 4, in toto 480. *Minore ætu* qui erat longus, et latus, 120 pedes, in toto 14400. *Climata* long. et lat. pedes 60, quadrat 3600. *Versu* long. et lat. pedes centum, in toto 10,000 *fugera*.

Pertica, a measure of 10 feet among the Romans: this cannot be our Perch.

Of these matters read *Rosinus libro 8 capite 10. tit. de legib. agrariis*, *Varro*, *Colummella*, in their first books. *Rosinus capite de limitibus terminis, lib. 8. cap. 8. Antiquitum Romanorum*, where many leaves of this argument are set down.

Limitum genera.

Decumeni ab oriente ad occidentem
Cardinis a meridie in Septentrionem
Prorsus ab occidente, in orientem
Transversi a Septentrione in meridiem.

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Of these matters read Johnson's life & cap-
tivity, his death, & his burial, & his
burial, where many leaves of this story
are set down.

Septentrionem in occidentem
Prope ad occidentem in orientem
Cordibus a meridie in Septentrionem
Occidentem ad orientem ad occidentem

[Faint, illegible markings]

100

A P P E N D I X

MR. THOMAS HEARNE'S

A P P E N D I X

TO HIS EDITION OF

CURIOUS DISCOURSES,

MR. THOMAS HEARNES

A P P E N D I X

TO HIS EDITION OF

CURIOUS DISCOURSES

2002

A P P E N D I X.

N^o I.

Sir JAMES WHITLOCK's Epitaph.

Out of a MS. in Quarto, containing an Account of the Monuments in many of the Churches of BUCKINGHAMSHIRE, with Notices of the Foundation and Antiquities of the same, collected and given to me by BROWNE WILLIS of WHADDON-HALL in BUCKINGHAMSHIRE, Esq; page 319.

PAWLEY.

IN the burial place of the Whitlocks or S. Ile, which was built by them, is this inscription:

*Hic deposita sunt Corpora
Reverendi judicis Jacobi Whitlock militis, unius Justiciar.
ad placita coram Rege. Natus fuit Londoni 28 Nov.
1570. Primum studuit Oxonii, ubi suscepit gradum in
Jure Civili. Deinde operam dedit Juri Municipali in
dio Templo London, & in eo legebat; postea Serviens
ad Legem sacros fuit justiciar. Cessavit termino Michaelis
1620. Abinde assumptus est in Bancam
Regis term. Mich. 1624.*

*Habuit ex uxore Elizab. unum filium Bulstrode
Whitlock, duas filias, Elizabeth, nuptam Thoma Moslyn
Militi, & Ceciliam in nuptam tempore mortis suae. Obiit
apud Pawley Court 21 Junii 1632. Vir eruditione & pru-
dentia illustris, vita & moribus venerandus. Et spectatissi-
me*

sime matronæ Elizab. uxoris dicti Jacobi, quæ nata est | in
hoc agro Buckinghamiensi 25 Julii 1575, patre Edwardo
Bulstrode | de Bulstrodes in Upton armigero, matre Cecilia
filia Johannis Croke Militis. | Fæmina marito suo amantis-
sima, fidelissima, in Re Familiari prudentissima, | pla, Religi-
osa, in Deum devota, in pauperes benefica, obiit apud
Falley Court | in vigilia Pentecostes 28. die Maii 1631.

No II.

Mr. CAMDEN'S Will,

Out of the MSS. Collections of the learned
Dr. THOMAS SMITH which he left to me
at his Death, Vol. VIII. p. 25.

E Registro
Curie
Cant. ex-
tract.

IN the Name of God amen. I William Camden Claren-
ceux found of body and mind, and accordingly mind-
full of my mortalitie, reposing assuredly all my hope in the
infinite mercie of my Saviour and Redeemer Jesus Christ,
into whose hands I commend my Soul, make and or-
daine this my last will and testament in maner and forme
following. First, I bequeath my bodie to be interred in
Christian and decent manner in that place where it shall
please God to call me to his mercie, and to the poore of
the said place in this sort; if at Westminster eight pounds
to the poor of Saint Margaret's Parish; if at Chisilhurst to
the poor there, if elsewhere to the poore of that place eight
pounds. *Item*, I bequeath to Sir Foulke Grevill Lord
Brooke, Chancellor of the Exchequer, whoe preferred me
gratis to my office, a peece of plate of tenn pounds. *Item*,
to the Companie of Painter Stayners of London, to buy them
a peece of plate in memoriall of mee, sixteene pounds. *Item*,
to the company of cordwayners or shoemakers of London
twelve pounds, wishing they would likewise make thereour
some peece of plate in memorie of mee. *Item*, to my cousin
John

John Wyatt, Painter of London, one hundred pounds. *Item*, to Giles Nicholſon of Poulton in Lancashire, to be committed to maſter Colevile of Lancaſter, or ſome other honeſt man of that place for his uſe, twentieth pounds. *Item*, to Lant the younger, bookſeller in Litchfield, five pounds. *Item*, to maſter Thomas Allen of Glouceſter Hall in Oxford, ſixteen pounds. *Item*, to Janus Gruterus, librerie keeper to the Prince Palatine Elector at Hidelberg, five pounds. *Item*, to Mr. Harvie, vicar of Chicheſhurſt, ſeven pounds. *Item*, to Leonard Brooke of Weſtminſter, ſometimes my ſervant, ſix pounds. *Item*, to Camden of London, Silkeman, tenn pounds. *Item*, to my godſonne Chriſtopher Birkhead, two pounds. *Item*, to my godſon Thomas Godwin, two pounds. *Item*, to my god-daughter Feild, two pounds. *Item*, to every one of the ſix heralds *, fower pounds. *Item*, to every purſivant ordinarie and extraordinary, two pounds. *Item*, to the ſinging men of the collegiate church of Weſtminſter, ſix pounds. *Item*, to each virger, two pounds. *Item*, to the bell ringers and under officers in the ſaid church amongſt them ſix pounds. *Item*, to the chorifiers, fower pounds. To theſe followeing a peece or memoriall rings of the ſame value. To Sir Francis Leigh of Weſtminſter, fower pounds. To Sir Peter Manwood, foure pounds. To Sir William Pitt, three pounds. To Mr. Saint Leo Knivetyne, three pounds. To Mr. John Chamberlaine, three pounds. To Mr. Limiter, three pounds. To Mr. † Seldon of the Temple, five pounds. To Mr. Harding the Uſher, fower pounds. To Mrs. Ireland, fower pounds. To Mrs. Buſh, late wife to Gabriell Birkhead, two pounds. *Item*, to John Halton, my ſervant, thirtie pounds. *Item*, to old Mother Driver, three pounds. *Item*, to Richard Hopkins, three pounds. To his daughter Alice, ſix pounds. To his ſonne, three pounds, but now that ‡ he is dead, the whole eight pounds to his ſonne. As for my bookes and papers, my will is that Sir Robert § Cotten of Conington, knight and baronett, ſhall have the firſt view of them, that he may take out ſuch as I borrowed of him; and I bequeath unto

* Sic in MS. noſtra.

† Sic.

‡ Sic.

§ Sic.

him all my imprinted books and manuscript, except such as
 • concernes armes and heraldry, the which with all my
 auncient scales I bequeath unto my successor in the of-
 fice of Clarenceux, provided that whereas they cost me
 much, that he shall give to my cousin John Wyast, Painter,
 such summe of money as master Garter and master Norry
 for the time being shall think meete. And alsoe that he
 leave them to his successor in the office of Clarenceux. Of
 this my last will and testament I constitute and ordaine
 William Heather of Westminster, gentleman, my sole exe-
 cutor, Sir Robert Cotton of Coniagron, knight and baronet,
 and master John Wise of ~~Coniagron~~ gentleman, my over-
 seers, bequeathing to each of them ten pounds, blacks for
 each of them, and for twelve poore men of Westminster, be-
 sides the almesmen: willing moreover that all these legacies
 be paid within one yere after my departure out of this
 world. Upon the peece of Plate for the Painters, *Gul. Cam-*
denus Clarenceux, filius Sampsonis Pictoris Londinensis, dono
dedit. Upon the peece of Plate for the Cordwayners, *Gul.*
Camdenus Clarenceux, filius Sampsonis Pictoris London. dono
dedit. William Camden. Signed and sealed in the pre-
 sence of Richard Harvey, John Hilton.

Probatum fuit Testamentum suprascriptum apud London coram
reuerabili viro Domno Willielmo Byrd, Milite, Legum
Doctore, Commissario legitime constituto, decimo die Mensis
Novembris, anno Domini millesimo sexcentesimo vicesimo
tertio, iuramento Willielmi Heather executoris in huiusmodi
Testamento nominati. Cui commissa fuit administratio om-
nium & singulorum bonorum, furium & creditorum disti-
defuncti de bene & fideliter administrando eadem ad sancta
Dei Evangelia iurat.

Swann. III.
 Qr. Tertio
 Libro.

The. Welham Registrarij Deputatus.

Sic.

Nº III.

Out of a small Volume of Epistles, by DE-
GOR. WHEAR, entituled CHARISTERA,
printed at OXFORD Anno 1628 in Octavo.
This Letter bears no Date. The next in
order, if he observe the Order of Time, is
dated October 10, 1625.

Ad Michaëlem Oldsworthum Amicum singularem singula-
riter colendum.

INter literas humaniores quas egregie doctus es (mi Olds-
worthe) non dubito quin Historiam rerum gerendarum
animam, impensius ames: inde *Methodum* meum limatiorem
jam gaudeo & auctiorem tibi obfero; non quasi te quicquam
quod minus jamdudum noveris docerem, cave me adeo
Suffemum arbitraris, sed ut tuum etiam (si merear) calculum
obtinerem, de quo haud parum mihi gratulabor; simul
ut pignus aliquod apud te existeret quanti te æstimem
& colam, quum insuper subscripserim

Tuus D. W.

E Coll. nostris MSS. Vol. IV. p. 1.

Ἰωσήφτος ἐκ τοῦ λόγου ἐπιγεγραμμένον κατὰ
Πλάτωνος περὶ τῆς τοῦ παντός αἰτίας. Περὶ
τοῦ ἐν ᾧ συνέχονται ψυχαὶ δίκαιων τε καὶ
αδίκων.

Οἷος τόπος ἐστὶν ἐν τῇ κτίσει ἀκατακλύστος χωρίον³
υπογυιόν ἐν ᾧ φῶς καὶ σκότος ἐκτεταταί· φῶτος ταῖνον
[μὴ καταλάμποντος, ἀνάγκη σκότος διηνεκῶς τυγχάνειν ἐν
τῷ⁴ χωρίῳ,] ὅς ἐστι φέρριον ἀπενεμήθη ψυχαῖς ἵδ⁵
κατὰ φύσιν ἀγέλοι φέροι, πρὸς τὰς ἐκείνων πράξεις δια-
νέμοντες τὰς τῶν τρόπων προσκαιρὰς κολάσεις. ἐν τῷ δὲ τῷ
χωρίῳ τόπος ἀφώρειται⁶ τῆς λιμνῆς πυρὸς ἀσέβου. ἐν ᾧ μὲν
καί τι τινὲς⁷ καταρριφθῆναι υπεβλήθησαν. ἱσχυάσαι δὲ εἰς
τὴν προαίρεσιν⁸ ἡμέραν, ἐν ᾗ δίκαιος καὶ σέβας ἀπέσπασε
ἡ ψυχή⁹ πᾶσιν αἰῶνας ἀπενεμήθη καὶ οἱ μὲν ἀδίκους καὶ
θεῶ ἀπειθήσαντες, τά τε μάταια ἔργα χειρῶν ἀνδρώτων
κατεσκευασμένα ἰδῶλα ὡς θεὸν τιμῆσαντες, ταύτης τῆς αἰδῆς
κολάσεως, [ἵς¹⁰ ὡς] ἄτιοι μiasμάτων γενόμενοι, προσκρι-
θῶσιν¹¹ οἱ δὲ δίκαιοι τῆς ἀφθάρτου καὶ¹² ἀνεκλιπέατε βασι-

1. Alii Calo, alii Hippolyto attribuunt. 2 Καὶ ὅτος μὲν ὁ περὶ
δαμόνιον τόπος· περὶ δὲ αἰδου, ἐν ᾧ συνέχονται ψυχαὶ δίκαιων τε καὶ
αδίκων, ἀναλκᾶιον εἰπεῖν. ὁ αἰδης, τόπος ἐστὶν &c. in Hoeschellii
Editione. 3 MS. υπογυιόν, perperam. 4 Hæc uncis inclusa
ad oram MS. adjecta sunt. 5 MS. mendose τὸ χωρίον, nisi
forfan pleniùs, ut Hoeschellii MS. legas, φῶτος ταῖνον ἐν τῷ
τῷ χωρίῳ μὴ καταλάμποντος, ἀνάγκη σκότος διηνεκῶς τυγχάνειν
τῷ τῷ χωρίῳ ὡς φέρριον, &c. 6 Τις, λίμνη in Ed. Hæsch.
7 Καταρριφθῆναι. Hæsch, lege Καταρριφθῆναι. 8 ἡμέραν ὑπὸ θεῶ,
ἐν ᾗ Hæsch. 9 Μία Hæsch. 10 Προσπληθεῖν Hæsch. 11 Inclu-
sum et missum in nostro Cod. Mæd habet Hæsch. 12 Sic scribe
pro ἀνεκλιπέατε quod est in MS. In Hæsch. ἀνεκλιπέατε habetur.

λείας

ἀλλ' ὅτι τὸν αὐτὸν νόμον οἱ ἐν τῇ αἰσθητικῇ μὲν συνέχονται, ἀλλ' ὁ αὐτὸς νόμος ὅς καὶ οἱ ἀδικοὶ. μία γὰρ εἰς τὸ τοιοῦτον χωρίον καὶ ὁδὸς, ὅτι τῇ πύλῃ ἐφεσώτα ἀρχαγγέλου αἵμα στρατιῶν πεπι-
 σεύκαμεν. ἢ πύλῃ διελθόντες αἱ καταγόμενοι ὑπο τῶν ἐν
 τὰς ψυχὰς καταγόμενων ἀγγέλων ἢ μὲν ὁδῷ πορεύονται,
 ἀλλ' οἱ μὲν δίκαιοι, ὅς εἰς δεξιὰ φωταγωγάμενοι, καὶ ὑπὸ
 τῶν ἐφεσώτων ἢ κατόπιν ἀγγέλων ὑμνῶμενοι, ἄγονται εἰς
 χωρίον φωτεινόν ἐν ᾧ οἱ ἀπ' ἀρχῆς δίκαιοι πολιτεύονται, ἐχ'
 ὑπ' ἀνάγκης κρατούμενοι, ἀλλὰ τῆς τῶν ὠρμμένων [4 ἀγαθῶν]
 δίας αἰεὶ ἀπολαύσαντες 5

καὶ 6 τῶν ἐκείνου καὶ τῶν
 προσδοκίᾳ ἡδόμενοι, κρείττω τῶν 7 βελτίονα ἡγούμενοι. οἷς
 ὁ τόπος ἡ καματηφόρος γίνεται, ὃ καύσων, ὃ κρύος, ὁ τριβόλος
 ἐν αὐτῷ, ἀλλ' ἡ τῶν πατέρων δικαίων τε ὠρμὴν ὅψις πάν-
 τοτε μεσιδῶ, ἀσπαιρόντων τὴν μετὰ τὸ τοιοῦτον ἀνά-
 παυσιν 9 αἰώνιαν βιωτὴν ἐν ἐξουσίᾳ. 10 τῶν δὲ καλῶν ὀνο-
 μασι κολοῦν Αἰθαρά. οἱ δὲ ἀδικοὶ [11 εἰς] ἀριστερά ἔλκονται
 ὑπὸ ἀγγέλων κολαστῶν, ἐκεί τε ἐκρούς πορεύονται, ἀλλὰ μετὰ
 βίας ὡς δίκαιοι ἔλκονται. οἷς οἱ ἐφεσώτες ἀγγέλοι [12 ἐπι-
 ταλῦντες] διαπύμπτονται 13 ἐπὶ νουθεσίᾳ καὶ φοβερῷ ὁρμῶν
 14 ἐπαπειλῶντες, εἰς τὰ κατώτερα ὄντες. 15 ὅς ἀγομῆνας
 ἔλκονται οἱ ἐφεσώτες εἰς πλησίον τῆς γένεως, οἱ 16 ἐγγίοντες
 καὶ μὲν 17 βραχυῶς ἀδιαλείπτως 18 ἐπακούσι, καὶ τῇ τῆς θεί-
 μης ἀτραπῇ οὐκ ἀμειβῶσι. 19 ταύτης δὲ τῆς ἐγγίοντος ὁψιως τὴν

1 Ita ex Hæsch. nam MS. nostrum, ὡς καὶ οἱ δίκαιοι. 2 Sic
 Hæsch. at MS. ἐκ. 3 Ἰσ. κατόπιν Hæsch. κατὰ τόπον. 4 Vo-
 cem istam omittit MS. sed habet Hæsch. 5. Hanc MS.
 lacunam impressus non agnoscit. Et rectius quidem abest.
 6 Τῇ τῶν Hæsch. 7 βελτίω Hæsch. 8 In MS. κρούσων
 9 Hæsch. καὶ αἰώνιαν ἀνακρίσιν, 10 Hæsch. τῶν δὲ ὀνομα-
 κολοῦμεν νόλ. Αἰ. 11 Omittit MS. sed adjici debet. 12
 Non habet Hæsch. 13 Ουκιδίζοντες Hæsch. 14 Sic Hæsch.
 at MS. ἀκούσι. 15 Ἀ. ἀγομῆνας Hæsch. 16 Ἐγγίον H.
 17 Ἰσ. βραχυῶς. 18 Ἐπακούσι H. 19 Ἀπὸ τῆς H.

φοβερὰν καὶ ὑπεβαλλόντως [¹ ξανθὴν] θίαν τοῦ πυρὸς ὀρώμε-
 τες, ² καταπιπλήγασιν τῇ προσδοκίᾳ τῆς μελλούσης κρίσεως,
 ᾗ δὴ δυνάμει κολαζόμενοι. ἀλλὰ καὶ ἔτι τὸν τῶν ³ δικαίων χο-
 ρὸν καὶ τὰς δικαίας ὀρώσει, καὶ ἐπ' αὐτῷ τέτῳ κολαζόμενοι. χάος
 γὰρ βαδὺ καὶ μέγα ἀνὰ μέσον ἐσθίεται ὥς μὴ δίκαιον συμ-
 παθήσαντα προσδέξασθαι, μήτε ἀδίκον τολμήσαντα διελ-
 θεῖν. ἔτις ὁ περὶ βίου λόγος, ἐν ᾧ ψυχὰς πάντων κατέχον-
 ται ἄχρι καιρῷ ὃν ὁ θεὸς ᾤρισεν, ἀνάστασιν, τότε πάντων
 ποιησόμενος, καὶ ψυχὰς μετενσωματῶν, ἀλλ' αὐτὰ τὰ σώματα
 ἀνίστων. αὐτὰ λευκὰ ὀρώντες ἀπιστεῖτε Ἕλληνες, ⁴ μάθετε μὴ
 ἀπιστεῖν. τὴν γὰρ ψυχὴν ⁵ γεννητὴν καὶ ἀδύνατον ὑπὸ θεῷ γεγο-
 νῆναι πιστεύσαυτες, κατὰ τὸν Πλάτωνος λόγον, χρόνῳ μὴ ἀπι-
 σήσῃτε, ὡς [⁶ καὶ] τὸ σῶμα ἐκ τῶν αὐτῶν φοιχείων σύνθετον
 γενομενον δυνατός ὁ θεὸς ἀναβιώσας ἀθάνατον ποιεῖν. καὶ ⁷ τὸ
 μὴ δυνατόν, τὸ δὲ ἀδύνατον ρεθῇσεται περὶ θεῶν. ἡμεῖς ἔτι καὶ
 σῶμα ⁸ ἀνίστασθαι πεπιστεύκαμεν. εἰ γὰρ φθείρεται, ἀλλ'
 οὐκ ⁹ ἀπόλλυται. τέτῳ γὰρ τὰ λείψανα ¹⁰ γὰρ ὑποδεξαμένη
 τηρεῖ καὶ δίκην σπώρας ¹¹ πικρῶν, καὶ τῇ γῆς λιπαρωτέρῳ
 συμπλεκόμενα, ἀνθεῖ. καὶ τὸ μὲν σπάρην κόκκος γυμνός
 φθείρεται, ¹² κελύσματι δὲ τῷ θηριωγήσαντος θεῷ θάλλων
 ἡμφισμένος καὶ ἰσδοξὸς ἐγείρεται, καὶ πρότερον εἰ μὴ ἀποθανὼν
 λυθῇ καὶ ¹³ συμπαγῇ. ὥς τε τὴν ἀνάστασιν τῷ σώματι καὶ μάτην
 πεπιστεύκαμεν. ἀλλ' εἰ καὶ λείπεται πρὸς καιρὸν διὰ τὴν αἰ-

1 Hæsch. non habet. 2 Καταπιπλήγασιν Hæsch. male. 3 Id.
 ἀγέλων. Hæsch. πατέρον χωρὸν. 4 Sic. Hæsch. sed per-
 peram MS. μαθηταί. 5 Ita uterque Cod. et MS. & impress.
 mendose tamen. Legendum ἀγεννητον. Plato enim in Phædro
 (unde hoc desumptum) animam docet αὐταγένητον εἶναι, &
 proinde concludit: ἔστι ἀνάγκη ἀγεννητον τι καὶ ἀθάνατον ἢ ψυχὴν
 εἶναι. Atque ideo forsitan pro χρόνῳ hic legendum φαιδρῳ.
 6 Sic Hæsch. sed omittit MS. 7 Sic Hæsch. MS. perperam
 τὰ. 8 Ita Hæsch. MS. ἀνίστασθαι. 9 Sic Hæsch. MS. vero
 ἀπόλλυται. 10 ὑποδεχομένη ἢ γῆ H. 11 Hæsch. γινόμενα. 12
 In MS. Hæsch. κελύσματι τι. 13 Συμπαγῇ Hæsch.

ἀρχῆς γενομένην παρακοὴν, ὡς εἰς χωνευτήριον εἰς γῆν καθίσταται πάλιν ἀναπλασθῆσόμενον. ἢ τριῆτον ἀνιστάμενον, ἀλλὰ καθαρὸν καὶ μηκέτι ¹ φθειρόμενον. ² καὶ ἰκάσῃ σώματι ἢ ἰδίᾳ ψυχῇ ἀποδοθήσεται, τῷτο ἐπενδυσάμενη ἐκ ἀναδῆσεται, ἀλλὰ συλχαρήσεται καθαρὰ καθαρῶ παραμύνασα. ³ ὡς ἐν τῷ κόσμῳ ⁴ νῦν δικαίως συνοδεύσασα, καὶ μὴ ⁵ ἐπιβελον ἐν πᾶσιν ἔχουσα, μετα πάσης ἀγαλλιᾶσεως ἀπολήψεται. οἱ δὲ ἄδικοι οὐκ ἀλλοιωθέντα τὰ σώματα, οὐδὲ πᾶσι τοῖς νόστοι μεταστάντα, ἐπὶ ἐνδοξασθέντα ἀπολήψονται. ἀλλ' ἐν οἷς νοσώμασιν ⁶ ἰτελεύτων, καὶ ὁποῖοι ἐν ἀπιστίᾳ γιγνέμενται, τοῖσιν τοῖς πῶς κριθήσονται. πάντες γὰρ δίκαιοί τε καὶ ἄδικοι ἐνώπιον τοῦ Θεοῦ λόγῳ ἀχθήσονται. τότε γὰρ ὁ πατὴρ τὴν κρίσιν πᾶσαν δίδωκε καὶ αὐτὸς βελὴν πατὴρ ἐπιτελῶν ⁷ κριτὴς παραγίνεται, ὃν Χριστὸν προσαγορεύομεν. ἐπὶ γὰρ Μινῶς καὶ Ραδάμανθος κριταὶ οἱ καθ' ὁμᾶς Ἕλληνας, ἀλλ' ὃν ὁ Θεὸς καὶ πατὴρ ἐδόξασι, περὶ ⁸ ἐν ἑτέροις λεπτομερέστερον διεληλύθαμεν πρὸς τὰς ἐπιζητῶνταις τὴν ἀλήθειαν. ἔτος τὴν πατὴρ εἰς πάντας δικαιοκρισίαν ποιούμενος, ἰκάσῃ κατὰ τὰ ἔργα παρεσκεύασε τὰ δίκαιον. ⁹ κρίσει παράσαντες οἱ πάντες ἄνθρωποι τε καὶ ἄγγελοι καὶ δαίμονες μίαν ἀποφθίγγονται φωνῇ, ἔτις λέγοντες ΔΙΚΑΙΑ ΣΟΥ Η ΚΡΙΣΙΣ. ἥ φωνὴ τὸ ἀγαπώδομα ἐπ' ἀμφοτέροις ἰπάγει τὸ δίκαιον. τοῖς μὲν εὖ πράξασιν ¹⁰ δικαίως τὴν αἰδίων ἀπόλαυσιν παρασχόντος, τοῖς δὲ τῶν φαύλων ἐρασταῖς τὴν αἰώνιον κόλασιν ¹¹ ἀποτίμειντος. καὶ τέτοις μὲν τὸ πῦρ ἄσβεστον διαμένει καὶ ἀτελεύτητον, σκόληξ δὲ τις ἔμπυρος, μὴ τελευτῶν, μηδὲ σῶμα διαφθείρον, ¹² ἀπαύσῃ δὲ ὁδὴν ἐκ σώματος ἐκδράσων παραμένει. τότες ¹³ ἔχ' ὕψους ¹⁴ ἀναπαύσει, ἐν ᾧ παραγερῇ, ¹⁵

1 Sic Hoefsch. Nam MS. habet φθειρόμενον. 2 Ω MS. 3 Ω Hoefsch. 4 Ισ. σὺν [vel ἐν] δικαιοσύνῃ συνοδεύσασα. 5 Potius ἐπιβελον. 6 Sic Hoefsch. At MS. ἰτελεύτων. 7 MS. κριτὴς. 8 Ισ. δικαστοῦ. 9 Sic Hoefsch. At MS. ἀποτίμειντος. 10 Sic H. In MS. ἀπαύσει. 11 Sic H. MS. ἀναπαύσει. 12 MS. ἀπαύσει. 13 MS. ἀναπαύσει. 14 MS. ἀναπαύσει. 15 MS. ἀναπαύσει.

θάνατος τῆς κολάσεως ἀπολύσει, ἢ παράκλησις συγγενῶν
 μισοεινσάντων ὀνήσει. ἢ γὰρ ἔτι δίκαιοι ὑπ' αὐτῶν ὀρίωνται
 οὐδὲ μνήμης γίνονται ἄξιοι. μένοι δὲ οἱ δίκαιοι δικαίων μεμ-
 νήσονται ἔργων, δι' ὧν ἐπὶ τὴν ἑράμιον βασιλείαν κατήντησαν.
 ἐν ᾧ ἔχ' ὕψους, ἢ λύπης, ἢ φόβου, ἢ φροντίος, οὐδὲ κῆρ, οὐδὲ
 ἡμέρα χρόνῳ μετμεμνῆται, ἔχ' ἥλιος ἀνάγκη κύκλον ἑραυῶν¹ δρό-
 μῳ ἐλευθέρωτος, [² οὐκ ἀγγέλοι] ὄρων μέτρα ἢ κέντρα πρὸς
 εὐγνωσιν ἀνθρώπων βίον διαμετρήμενα³ ὁροδευῶντες. ἢ ἐπί-
 ληψη φθίνουσα ἢ αὐξήσουσα, ἢ τροπαὶ καιρῶν⁴ ἐπάγουσα, ἔχ'
 ὑγραίνουσα γῆν. οὐδὲ ἥλιος ἰσημερινόν, οὐκ ἄρτος εὐφρομένη,
 οὐκ ὠρίων⁵ γεννώμενος. οὐκ ἄστρον πλάτη ἐκφιδμός, ἢ δύσ-
 λατος γῆ, οὐδὲ δυσπύρετος παραδείσου οὐλῆς, οὐδὲ δεινὸν θα-
 λάσσης φρύαγμα⁶ καλύων ἱπιδάντα πατῆν, εὐβάτος δὲ καὶ
 οὕτω τοῖς δικαίοις γενήσεται, ἔτε τῷ ὕγρῳ γεραμένη [⁷ οὐδὲ
 τοῦ γέρου, διὰ τὸ κῆρα τοῦ⁸ ἰσχυροῦ παταμένη.] καὶ ἑραυῶν
 ἀσκήτος ἀνθρώποις, οὐδὲ τότε⁹ ὁδὸς ἀπύρετος, ἢ γῆ ἀνέ-
 ρχεται, οὐδὲ ἀνθρώποις ἐπύπνοος, ¹⁰ αὐτομάτῃ δὲ φύσσα καρ-
 πῶς πρὸς τῆνοσμίαν [¹¹ εἰ προσέξῃς ὁ δεινὸς ἔξων.] ἢ θηρίων
 γένεσις πάλιν, οὐδὲ ¹² τῶν λοιπῶν ἐκθρασσάμενη εἰσία. οὐδὲ
 γὰρ ¹³ ἀνθρώπος πάλιν γενῶν, ἀλλ' ¹⁴ ὁ μετὰ δικαίων
 ἐπιθρόνους διαμίνει ἀνικλητός, ἄρα δικαίος ἀγγέλοις καὶ
 πνεύμασι¹⁵ θεῶν, καὶ τῷ ταῦτε λέγεται ὡς τῶν δικαίων χορὸν

¹ Sic Hoesch, Sed MS. δρόμον. ² H. non habet. ³ H.
 ὁροδευῶντες. ⁴ Sic H. At MS. ἐπάγουσα. ⁵ Is. θηράμενος,
 vel κυμαίνων. ⁶ In MS. κυμίων. ⁷ Totum hoc inclusum
 ab impresso abest. ⁸ Is. ἰσχυρος. ⁹ H. τῆς ἀναβάσεως ἢ ὁδὸς.
¹⁰ H. αὐτομάτῃ. ¹¹ Inclusa H. non habet. Pro si vero in
 MS. est si. ¹² Τῶν λοιπῶν ζώων ἐκθ. H. ¹³ Ἀνθρώποις H.
¹⁴ Ὁ τῶν δικαίων H. Is. ὁ μὲν τῶν. ¹⁵ Quae sequuntur
 primo ad fidem & formam MSⁱ codicis (mendosi satis) ex-
 pressimus. (Hoc excepto quod in locis extra dubium positis
 & dictiones sigillatim descripsimus & accentus cuique suos
 adscripsimus. Quae utraque in scripto codice desiderantur.)
 Deinde emendationem nostram (si forte) subiecimus.

ἀνθρώπων

ἀνδρῶν τε καὶ γυναικῶν ἀγῆρας καὶ ἀφάρτως διαμένει ὑμῶν.

EN B10

τὸν ἐπὶ ταῦτα πρᾶγόμενον Θεόν. διὰ τῆς τῆ εὐταχτε νομο-
θεσίας σου τοῖς καὶ πᾶσα ἡ κτίσις ἀδιάληκτον ὕμνον ἀνίστη
ἀπὸ τῆς φθορᾶς εἰς ἀφθαρσίαν διακίνη καὶ καθαρωῦ πνεύματος δι-
δαξασμένη. ἐκ υπαναγωγῆς δεσμός συνεχροῖται, ἀλλὰ ἐλευθε-
ριαζώσα ἐκείσιν τὸν ὕμνον ἅμα τῆς ἐλευθερωθεῖσιν πάσης
δουλείας ἀγγέλοις τε καὶ πνεύμασιν καὶ ἀνθρώποις αἰνέση τὸν
πεποιηκότα τέτῃς εἰν πισθέντες Ἕλληνες καταλείψεται τὴν
ματαιότητα τῆς ἐπιγευῆς καὶ χρημάτων σωρε σοφίας, καὶ
μὴ περὶ λέξεις ῥημάτων ἀσχολούμεναι τὸν νοῦν εἰς πλάνησι-
νῶντε ἀλλὰ τοῖς Θεοπνεύστοις προφῆταις καὶ θεῶν καὶ λόγοις
ἐξηγηταῖς ἐνχειρίζαντες τῆς ἀκοῆς Θεῷ πιστεύεται ἰσισθαι
καὶ τέτων κοινωνοὶ καὶ τῶν μελλόντων τεύεσθαι ἀγαθῶν, ἀρι-
στρετὲς βρᾶν ἀνάστασιν καὶ τὴν ἐκεῖ βασιλείαν ὁφείσθαι φανερῶς
Μ Θεὸς αὖ νῦν σπείωνται. ἃ ὅτε ὀφθαλμοὶ εἶδεν, ὅτε
ὅς ἤκουσεν, ὅτε ἐπὶ καρδίαν ἀνθρώπου ἀνέβη ὅσα ποιήσῃ
ὁ Θεὸς τοῖς ἀγαπῶσιν αὐτόν. ἑφοῖς ἀνευρῶ ὑμᾶς ἐπὶ τέτοις
κρίνω παρὲκαθα βρατε τέλος ἀπάντων, ὥστε καὶ τὰ τα εὐπε-
ποιηκῶτι τὸν βίον λήξαντος δε τῆ τέλος ἐξοκλῆαν τῇ πρὸς
κακίαν ἀνοήτοι οἱ πρὸςθε πόνοι ἐπὶ τῇ καταστροφῇ τῆ δρα-
ματος ἐξαθλῶ γενομένη. τότε χεῖρον καὶ ἐπιστευσμένως
βιώσαντι πρότερον εἶν ὕπερον μετανοήσαντι πολλῶν χρόνῳ
ποδῖταιαν παγήραν ἐκμύκησαι τῷ μετὰ τὴν μετανοίαν χρόνῳ
ἐκρίβειας δὲ δεῖται πολλῆς ὑπὲρ τῆς μακρῶν ὅσω πεποιηκῶσι

MEN

ἐάμῃσι διαίτης ἡγιασῆς προσοχῆς πλείονος εἶν δυνατοὺς γὰρ
τοῖς ἀδελφοῖς ἀπαύσαι παύσης τῆς πρὸς . . . ἀλλὰ
μετὰ θεῷ συνάμας καὶ πύδῃ . . .
καίτοις καὶ ἀδελφῶν βοηθείας καὶ πλημμελῆς μετανοίας καὶ
σοφῆς μελέτης κατορθύται. Καλὸν μὲν αὖ μὴ ἐπαρ-
ημένῃ, ἀγαθὸν δὲ καὶ τὸ ἀμπερτάνοντα μετανοῶν ὥστε
ἀρετῇ

ἀρίστον τὸ ὑγιαίνειν αἰῶς· καλὸν δὲ καὶ τὸ ἀνασφαλεῖ μετὰ νόσον.

τῷ Θεῷ δόξα.

Eorum quæ in præcedentibus aliquot paginis ad fidem MS. biulca & corrupta habentur emendatid.

ἄμα δικαίοις ἀγγέλοις καὶ πνεύμασι Θεῷ καὶ τῷ τέτῳ λόγῳ. ὡς τῶν δικαίων ¹ χορὸν ἀνδρῶν τε καὶ γυναικῶν ἀγῆρω καὶ ἀφθάρτως ² διαμένειν ὑμνουῦντα τὸν ἱπ' ἑαυτὰ προσαγόμενον Θεόν· διὰ τῆς ἐν τῷ βίῳ αὐτῶν νομοθεσίας· συν οἷς καὶ πᾶσα ἡ κτίσις ἀδιαλείπτου εἰς ἀφθαρσίαν δι' αὐτῆς καὶ τῆς πνεύματος δεδόξασμενη, ἔχ' ὑπ' ἀνάγκης δέσμοις συσχεθῆσεται· ἀλλὰ [ἐν] ἰλευθερίᾳ ³ ζῶσα [δι'] ἐκείσιν ὑμνον ἄμα τοῖς ἰλευθερωθεῖσιν [ἀπὸ] πάσης δουλείας ἀγγέλοις τε καὶ πνεύμασι καὶ ἀνθρώποις αἰνέσει τὸν πεποιηκότα ⁴ τοιούτους· ἵαν πισθίντες Ἕλληνες καταλείψετε τὴν ματαιότητα τῆς ⁵ ἐπιγίης καὶ χρηματοποιεῖ σοφίας· καὶ μὴ περὶ λέξεις ῥημάτων ἀσχολέμενοι, τὸν νῦν ⁶ εἰς πλάνης οἶμον ὠθῆτε. ἀλλ' εἰ τοῖς διοπνεύσοις προφήταις καὶ δείξι λόγῳ ἐξηγηταῖς ἐχχειρίσαντες ταῖς ἀκοαῖς Θεῷ πιστεύσητε, ἴσισθε καὶ τῶν κοινωνῶν, καὶ τῶν μελλόντων ἐντεύξεσθε ἀγαθῶν, ἀμέτρον τε ἔραν ἑαύτας· καὶ τὴν ἐκεῖ βασιλείαν ὄψισθε φανερώς, καὶ γνώσεσθε ὅσα νῦν σισιῶπῃται. ἃ ὅτε ὀφθαλμὸς εἶδεν, ὅτε ἤρῃσεν, ὅτε ἐπὶ καρδίαν ἀνθρώπου ἀνέβη ὅσα ἠτοίμασεν ὁ Θεὸς τοῖς ἀγαπῶσιν αὐτόν. ἵφ' οἷς ἂν εὐρω ὑμᾶς, ἐπὶ τέτοις κρινῶ παρ' ἡμεῶν, βοᾷ τὸ τέλος πάντων. ὡς τῷ τε εὐ πεποιηκότι τὸν βίον, λέξαντος δὲ τῷ τέλει ἐξοκῆλαντι πρὸς κακίαν, ἀνόνητοι οἱ πρὸς Θεὸν πόνει ἐπὶ τῇ κατὰ γραφὴν τῇ δρα-

1 Ιο. χορὸς. 2 Διαμένει ὑμνῶν. 3 Ιο. ἄδουσα ἐκείσιν τὸν ὑμνον. 4 Ιο. τέτῳ. 5 Αἰγμ. ἐπὶ γένε· καὶ χρημάτων ἀπόρου. 6 Ηἰς equa hæret: ἴσ. ἱμπαροῦντε. εἰς πλάν. οἰκόντες.

μῆτοι

ματος ἐξάθλων γενομένῳ τῷ τε χεῖρον καὶ ἐπισεσυρμένῳ
βιώσαντι πρότερον, ἔστιν ὕπερον μετανοήσαντί πολλῷ χρόνῳ
πολιτείαν πονηρὰν ἐκνικήσαι τῷ μετὰ τὴν μετάνοιαν χρόνῳ.
ἀκριθείας δὲ δεῖται πολλῆς, ὥσπερ τοῖς μακρᾷ νόσῳ πεπο-
νηκόσι σώμασι διαίτης χρεῖα καὶ προσοχῆς πλείονος. ἔστι
μὲν ἀδύνατον γὰρ ἴσως ἀθρόως ἀποκόψαι πᾶσι τροφῇ.
ἀλλὰ μὲν θεῶν δυνάμεως, καὶ ἀνθρώπων ἰκυσίας, καὶ ἀδελ-
φῶν βοηθείας, καὶ εἰλικρινῆς, ματανοίας, καὶ συνεχῆς με-
λέτης κατορθύεται. * καλὸν μὲν τὸ μὴ ἀμαρτάνειν, ἀγαθὸν
δὲ καὶ τὸ ἀμαρτάνοντα μετανοεῖν. ὥσπερ ἄριστον τὸ ὑγιαίνειν
αἰεὶ, καλὸν δὲ καὶ τὸ ἀνασφάλαι μετὰ νόσον.

Τῷ Θεῷ δόξα.

*Josephi, ex opere inscripto, contra Platonem, De Causa Uni-
versi, de loco in quo justorum pariter & injustorum animæ
continentur.*

ATque hæc quidem Dæmonum sedes est. De inferis
autem, ubi justorum pariter & injustorum animæ con-
tinentur, necesse est ut dicamus. Infernus ideo (sive Hades)
locus est in rerum natura plane incultus, subterraneum spe-
cus, in quo lux mundi non resplendet : atque ideo locum
hunc nullo lumine illustratum æternis tenebris horrescere
necesse est. Regio hæc animabus pro carcere, designata est,
cui Angeli custodes præfecti sunt, juxta sua cujusque opera
debitas cuique pro more pœnas distribuentes. In hac autem
regione locus quidam in recessu separatus existit, lacus ignis
inextinguibilis. In quem nondum quempiam projectum
novimus : preparatus tamen est in decretorium illum diem,
ubi suspicienda justii judicii declaratio omnibus pro merito
exhibeatur. Et injusti Deoque immorigeri, & qui opera
vana manibus hominum fabrefacta idola, ceu Deum colue-
runt, ut hujusmodi scelerum auctores ad æternum suppli-
cium damnentur. Justii autem incorruptibili & indefecti-
bili regno potiantur. Qui nunc quidem apud inferos con-
clusi sunt, non eodem tamen cum improbis loco. Unus
siquidem est in hanc regionem descensus, cujus portæ Arch-

angelum una cum præsidio præfectum credimus; quare quidem portam ubi primum præterveſti ſunt qui ab angelis animarum præfectis eo deducuntur, per eandem viam non ulterius procedunt. Sed juſti in dexteram, Angelis præfectis aliis facem preferentibus aliis à tergo hymnos decantantibus, in locum lucidum deducuntur. Ubi quotquot ab orbe condito juſti fuere, vitam degunt, neceſſitate nulla conſtricti, ſed bonorum quæ ibi conſpiciuntur viſione indeſinenter fruentes * * & novorum ſemper exſpectatione lætabundi; atque illa his præſentibus potiora judicantes. Et hic quidem locus non illis laborem creat, non laſſitudinem: non illic æſtus, non frigus, non tribulus: ſed qui ſe coram conſpiciendum præbet patrum juſtorumque aſpectus molli-ter ſemper ſubridens æternam poſt has ſedes in cœlo requiem & reſurrectionem exſpectantium. Hunc autem locum Sinum Abrahæ vulgo vocamus. Impii vero ab Angelis tortoribus in ſiniſtra rapiuntur, non illi quidem ſponte ſua procedentes, ſed captivorum inſtar per violentiam tracti. Ad quos Angeli præfecti munus ſuum obeuntes mittuntur, qui probris eos impetentes, & aſpectu torvo increpantes, ad ima tartari protruduntur. Quos inter agendum præfecti trahunt uſque dum gehennæ propiores facti qui in proximis conſiſtunt ebullientis aquæ murmur continuo exaudiunt, neque ab æſtus fumo immunes ſunt. Ex hoc autem propiori intuitu tremendum illud & immane quantum flavum ignis ſpectaculum contuentes, præ futuri judicii exſpec-

tantum non

tatione obſtupeſcunt, etiam nunc *potentia* puniti. Quin & illic etiam patrum chorum juſtoſq; proſpiciunt, & ob hoc ipſum vel maxime torquentur. Ingens enim & altum chaos in medio interjectum eſt

medios dirimit, quod nec plium quenkum compaſſione aſſectum admittat, nec impium tranſire auſum ſuſcipiat. Atque hæc quidem de inferis hiſtoria ſic ſe habet, ubi ſingulorum animæ uſque ad tempus à Deo præſinitum cohibentur; qui tum reſurrectionem omnium facturus eſt: non animas in alia corpora transferendo, ſed ipſa corpora reſuscitando. **Quæ cum vos Græci ſoluta morte videatis fidem non adhibetis,**

jam tandem infidelitatem dediscere.

betis. *Discite autem non credere desinere.* Qui enim animam ex Platonis sententia, ingenerabilem & immortalem à Deo factam credidistis, procedente tempore non diffidetis quin & corpus etiam ex eisdem elementis compactum potens sit Deus, vitam ei rursus largiendo, immortale efficere. Neque enim unquam de Deo dicetur, quod hoc possit, illud non possit. Nos igitur & corpus etiam resurrecturum credidimus, quod utcumque corrumpatur non tamen perditur: reliquias siquidem ejus terra suscipiens eas custodit; quæ seminis instar pinguefactæ & una cum fertilioribus terræ partibus subactæ resforescunt. Et id quidem quod seminatur nudum granum seminatur sed creatoris Dei jussu revirescens vestitum & ornatum resurgit; neque tamen prius quam intermortuum dissolvatur & subigatur. Atque ideo resurrectionem corporis non gratis credidimus: quod licet propter inobedientiam illam primitus factam ad tempus solvatur, at in terram tanquam in fornacem de novo rursus formandum projicitur. Non quale antea resurrecturum, sed purum nec in posterum corrumpendum. Et sua cuique corpori anima reddetur, quo induta non ultra tristabitur, sed munda mundo cohabitans collætabitur; & exultatione plena resumet illud quocum in mundo juste conversata fuerat, & in omnibus operum particeps habuerat. Improbi autem nec in *melius* mutata corpora, nec à dolore & ægritudine aliena, nec glorificata recipient: sed quibus morbis gravati à vivis excefferant. & quales quales in infide-

ad tribunal judicii sistuntur. Universi litate sua fuerant, tales plane judicabuntur. Omnes enim iusti pariter & iniusti coram Deo Verbo sistuntur: illi siquidem omne iudicium commisit pater, atque ipse voluntatem patris exsequens iudex comparet, quem Christum vocamus. Neque enim, qui apud vos Græcos, Iudices hic sunt Minos aut Rhadamanthus, sed quem Deus & Pater glorificavit, de quo à nobis alias distinctius actum est, in eorum gratiam qui veritatem investigant. Hic iustum patris iudicium in omnes exercens, unicuique secundum opera sua quod æ-

ad sententiam

quum est ordinavit. Cujus judicio omnes pariter homines, Angeli, Dæmonesque hanc una vocem tollent, sic dicentes, Justum est Judicium tuum. Cujus acclamationis mutua hinc inde reditio utrique parti quod justum est infert; iis qui benefecerant æternam fruitionem conferente iudice, malorum vero cultoribus æternam pœnam distribuyente, Atque hos quidem non exstinguibilis ignis & indefinens manet, sed & vermis quidam igneus, non moriens, nec corrumpens corpus, sed interminabili dolore è corpore prorumpens perdurat. Non illos somnus in requiem coget, non nox solabitur, non mors supplicio liberabit, non affinium mediatorum consolatio juvabit. Neque enim iusti jam ab ipsis ulterius videntur, neque digni sunt qui in memoria habeantur. Soli autem iusti bonorum operum memores erunt, per quæ in cœleste regnum provecti sunt: In quo nec somnus, nec dolor, nec corruptio, nec cura, non nox, non dies tempore mensuratus, non sol ex necessitate per cœli orbitam cursu circumactus. non Angeli qui tempestatum spatia & cœli cardines ad vulgo notos humanæ vitæ usus dimensa disponant. Non luna deficiens aut crescens, aut vices temporum inducens: nec illa terram humectans, nec sol adurens. Non circumvolvitur Arctus: non venatur Orion: non vagus astrorum cursus numeros suos absolvit: sed terra calcatu facilis & Paradisi atria inventu haud difficilia. Non horrendus maris fremitus conscendentem prohibet quo minus pedibus calcet: nam & ipsam iustorum gressus facile admittet; nec humore suo destitutum, nec firmitate sed per impressa leviter vestigia proculcatum. Non cœlum ab humanis incolis imparatum, nec qua illuc ascenditur via impossibilis inventu. Nec inculta jacebit terra, nec tamen ab hominibus elaborata. Sed sponte sua fructus in ornamentum *universi* proferit; si quidem Dominus ita jusserit. Nulla ultra ferarum genitura, nec reliquorum natura animantium in prolem prorumpit. Neque enim homo jam ulterius gignit; sed iustus piorum numerus indeficiens perdurat, una cum Angelis & Spiritibus Dei iustis, & Patre Verbi. Adeo ut iustorum chorus virorum pariter & feminarum ab omni prorsus

prorsus senio & corruptione immunis permaneat, Deum hymnis celebrans, qui beneficio legum in vita recte instituta latarum, eos ad hoc status perduxit. Et cum his una uni-

tollet

versa etiam creatio indefinenter proferet hymnum ut quæ à corruptione ad incorruptionem deducta, & spiritus lustratione glorificata, nullis necessitatis vinculis constricta tenebitur, sed in libertatem asserta per spontaneum hymnum, una cum Angelis Spiritibusque & hominibus ab omni prorsus servitute liberatis. Creatorem suum celebrabit. Si ergo vos Græci his persuasi, terrenæ istius & quæstuosæ sapientiæ vanitati nuncium remittatis, nec circa dictionum argutias occupati intellectum vestrum in erroris semitam impellatis: sed inspiratis cœlitus prophetis & divini verbi interpretibus aures vestras accommodantes Deo credatis, eritis & vos horum participes, & quæ futura sunt bona consequemini. Immensi cœli ascensum, & quicquid illic regni est aperte videbitis: & ea cognoscetis qui nunc reticentur. Quæ nec oculus vidit, nec auris audivit, nec ascendit in cor hominis quæ Deus præparavit diligentibus se. Communis omnium finis continuo clamat, in quibuscunque tandem vos invenero, in illis etiam judicabo. Adeo ut etiam recte vitam instituenti, sine autem ingruente in vitium effuso, inutiles & frustra antea suscepti labores, ut qui deducta ad catastrophem fabula exors præmii dimittitur. Illi autem, qui pejus etiam & discincte nimis antea vixerit, licebit postea poenitentiam agenti de male exactæ vitæ cursu diutius eo quod post poenitentiam reliquum temporis spatio victoriam referre. Sed hoc ut fiat diligentia plurima opus habet: non aliter quam corporibus quæ diuturno morbo laborarunt diætæ necessaria est & major cura adhibenda. Foran enim vix possibile est confertim & uno quasi ictu alimenta morbi præcidere. Sed per Dei potestatem, & hominum vicinitatem, & fratrum auxilium, & poenitentiam sinceram, & curam continuam felici tandem exitu emendatur. Optimum quidem est non omnino peccare, bonum vero & peccantem resipiscere: sicut optimum est semper sanum esse, bonum vero & post morbum revalescere. Deo Gloria & potentia in secula seculorum. Amen.

N^o V.

Dr. THOMAS SMITH's *last Letter to the Publisher, transcribed from a MS. in the Publisher's Possession, intituled, A Collection of Letters, in number CLXVIII, written to myself by the Reverend and Learned Dr. Thomas Smith, beginning Nov. 9, 1703, and ending April 1, 1710.*

SIR,

I WRITE this to acknowledge the receipt of your letter of the 25 March. The inscription * in it I do not believe to be genuine; but of this I am not able to write more, by reason of the utter extinction of my right eye, and the weakness of my left: which forbids mee to make use of it either in reading or writing for above 4 or 5 minutes at a time: which, together with an inflammation in my other uselesse eye, gives mee extreme great paine, and that continued; so that I am forced, to obtain some kind of ease, to lye upon my bed a great part of the day, God grant mee patience under, and submission to his heavenly will. So that now at last there is like to be a fatal interruption put to our correspondence, on my part at least; and therefore I would not have you give your selfe the trouble of writing to mee, til you heare from me first, either by a short letter of my owne, or by the hand of a friend.

In the midst of all my paine and anguish, I thanke God, I am not sick, and find no symptoms of approaching death upon mee: yet considering my great age, having now almost run out the threescore and twelfth yeare of my life (for I was born 3 June 1638.) I conclude I have not long to live, and that there may be some unforeseen sudden change, which may carry me off.

* I have published this inscription since in the 5th vol. of Leland's Itin. p. 137 H.

My

My Br. told mee this weeke, that Mr. Fisher acquainted him, that his kinsman, Dr. Hudson, would be in London very speedily. If so, desire him to come and visit mee; for I heartily desire to see him and discourse with him.

I cannot hold out any longer. I conclude this, I feare my last, letter to you with my prayers to our gracious and merciful God to blesse you with long life, vigorous healtie, and a perpetual use of your eyes. *Disce meo exemplo.*

I am, Sir,

London,
1 April 1710.

Your affectionate friend
and humble servant,

THOMAS SMITH.

*This is the last letter I received from this Great Man; for he died at London the 11th * of May following, between 3 and 4 of the clock in the morning, as I was informed by my friend, the reverend and learned Mr. Hilkeah Bedford, and was buried (as I was informed by the same gentleman) on Saturday night immediately following in St. Anne's church between 10 and 11 o'clock.*

THOMAS HEARNE.

Nº VI.

E Coll. MSS. Smithianis penes nos,
Vol. XCIII. p. 143.

Archbishop Laud to Mr. John Greaves of Merton College.

S I R,

YOUR kind letter of November 15, came not to my hands, 'til the beginning of this weeke; else you had certainly received my answer and thanks for your kindnesses sooner.

I see you have taken a great deale of care about the coines I sent to the University. And I hope, as you have seen the last I sent, with others, placed in their severall cells

cells respectively; so you have also seen their names written into the booke, that both may be perfect and agree together.

For the placing of them I leave that wholly to the university, whose they now are: yet I must needs approve of the way of placing them, which you have thought on. Nor can there be any objection against it, but that which you have made about the M. S. Commend my love to Dr. Turner and Mr. Pocock; and when you have weighed all circumstances, whatsoever you shall pitch upon shall serve, and please mee. So to God's blessing I leave you, and rest.

Your unfortunate poor friend

Tower, Janua.
13, 1641.

W. CANT.

N° VII.

E Coll. nostris MSS. Vol. I. p. 99.

Mr. Timothy Nourse's Donation to the University of Oxford.

Mr. Timothy Nourse, who dyed July 21st 1699, gave to the Bodlejan Library by his last Will and Testament, as followeth, in these words: /

Newent in
Glouc. ff.

ITEM, I give to the Bodlejan library in Oxford all my collection of coins and medalls, whether of gold, silver, or copper, being in all about five or six hundred pieces, in thankfull remembrance of the obligations I have to that famous university.

This was faithfully transcribed out of the said will
by me

ABRA. MORSE,

Rector de Hunstley in Com. Glouc.

Gould

Could peeces	2.	
White	121.	That which is above written
Copper	409.	is a copy of the paper, sent
In all	532.	by Mr. Morfe, now in the
A brass buckle.		publick library.

N^o VIII.

A Note of the Divinitie School and Librarye
in OXFORD.

Sent to Mr.
Hearne in a
letter by his
friend the
reverend
and learned
Mr. Tho-
mas Baket,
B. D. of St.
John's Col-
lege, Cam-
bridge.

ABOUT the yeere of our Lorde 1478, the divinity school and librarye in Oxford was founded, not by one but many benefactors: for as aperythe in the proctors books, in the same yeere a statute or decree was made by the universitie, that between the feasts of St. Luke and All Sayncts, solemn dirige and masse shall be sounge for the soules of John Kemp late cardinall and archbp. of Canterburye, and Thomas Kempe bishope of London, and that they should be remembered en everye sermon in Oxford, at Paule's crosse, and the hospitall in London, with this provifoe annexed, yealding the cause of this statute: "Pro-
"viso quod hæc ordinatio vim capiat & effectum, cum
"summa mille marcarum ad ædificium scholarum sacræ
"theologiæ applicand. fuerit plenarie universitati Oxon.
"persoluta. Et si contingat aliquam porcionem dictæ sum-
"mæ mille mercarum post completum ædificium hujusmodi
"remanere, quod portio remanens ponatur in aliqua cista,
"ad usum scholarium mutuari volentium." And of this money appeareth 200 markes to have been paied, and a bonde of the archbp. taken for the rest. At the same time another statute was made, towching the keepinge, lending, &c. of bookes given to the universitie by the duke of Gloucester. "*Inprimis*, pro firma & perpetua custodia largif-
"simæ & magnificentissimæ donationis cxxix. voluminum
"per sereniss. principem & dominum inclitissimum domi-
Vol. II. F f f " num

" num Humfridum regum filium fratrem & patrum, du-
 " cem Glocestriæ, comitem Pembruch. & magnum came-
 " rarium Ang. nostræ universitati, ex summa sua liberalitate
 " donatorum, & quorumcunque voluminum in futuris per
 " eundem serenissimum principem donandorum, ut fiat unum
 " novum registrum, in cista quinque clavium reponendū."
 &c. Also thei decreed, that within three dayes of Simon
 and Judes day, a masse of the trinitie, or of our Ladie
 should be songe for hym and his wiefse Elioner. Also a
 chaplein of the Universitie was chosen, after the maner of
 a Bedell, and to hym was the custodie of the librarye com-
 mitted, his stipend—*CVI s.* and *VIII d.* his apparell found
 hym *de secta generosorum*. Noe man might come in to
 studdie but graduats and thoes of 8 years contynuan-
 ce in the universitie, excepte noblemen. All that come in must
 firste sweare to use the bookes well, and not to deface them,
 and everye one after at his proceedings must take the licke
 Othe. Howers apoynted when they should come in to studdie,
 viz. betwene ix and xi aforenoone, and one and four
 afternoone, the keper geving attendaunce: yet a preroga-
 tive was graunted the chancellour Mr. Richard Courtney
 to come in when he pleased, during his owne lieffe, so it
 was in the day-tyme; and the cause seemeth, that he was
 the cheiffe cawser and setter on of the librarye; for it folow-
 eth: "*Quam prærogativam ad vitæ terminum concessit*
 "*universitas in favorem Mri. Rici. Courtnaye nunc can-*
 "*cellarii, cujus temporibus & labore est completa domus.*"
 The librarye was buylded by many benefactors, and not
 by one, for the chaplein was bound under payne of perjurye
 to remember, "*personas certas, quæ magis sunt meritæ,*"
 in his masses, whoes names are, "*Illustriss. princeps Hen-*
 "*ricus Quartus Rex Ang. & Franc. Sereniss. Princeps*
 "*Henricus Princeps Walliæ primogenitus hujus, Illustres*
 "*sibi Fratres, Thomas, Johannes, & Humfredus, Tho.*
 "*Arundell Cant. Archiepiscopus, Philippus Repinton Lin-*
 "*coln: Episcopus, Edm: Comes Marchiæ, & Mr. Richar-*
 "*dus Courtney.*" More rules and ordinances are sett
 downe towching this librarye, but theis be the cheefeste.
 Worthy

Worthy Sir,

That I might not send you an empty letter, I have copied out this paper. How it agrees with your accounts, or whence it was taken, I cannot surely say, but it was copied out (with other antiquities) by Matthew Stokys a publick notary, and regr. of this university under Qu. Eliz. and sooner. I suspect it to be taken from archbishop Parker's MSS. where I remember to have met with somewhat very like it, if not the same. —————

* * * * *

Nº IX.

E Coll. nostris MSS. Vol. LVII. p. 164.
Collections relating to the Div. Shcoole and
Library of the University of OXFORD, writ-
ten by Dr. LANGBAINE.

TH^O. Kemp Episcopus London. construxit Scholæ
Theologicæ Atrium, cathedram, valvas, turiculas, &c.
Scholam etiam voltavit, & lapide quadrato absolvit anno
1476. Ed. 4. 16.

Redintegravit hoc opus Episcopus Lond. inchoatam ante,
& derelictum ab Academicis, annos fere 60.

Academici per literas repetunt à rege Latomos, quos
Episcopus Wintoniensis avocarat, ad perficiendum ædificium
Vindelesoriæ cœptum.

Jo. Tibtoft comes Wigornæ & Humfredi Gloc. suc-
cessor, cum esset Patavii, libros quosdam pollicitus est
Acad. Oxon. quorum indices ad eos misit, quos illi ad
quingentas marcas æstimarunt. Sed decollatus postea, non
præstitit quod promisit.

Georgius Nevillus Archiepiscopus Eboracensis pollicitus
est, se recuperaturum libros comitis Wigorn.

A P P E N D I X.

Academia scripsit G. Wikham Episcopo Winton. ut illis accommodaret cachinas, quarum ope Scholam Theologicam voltis & fornicibus exornarent.

Bibliotheca Oxon. hos habuit Benefactores, Henr. 4. Henr. Principem ejus filium, itemque Thomam, Joannem, Humfredum ejus fratres: Tho. Arundel Archiepis. Cant. Philip. Repington Episcopum Lincoln. Edm. Comitem Marciz, Ric. Courtney, Ric. Lichefilde Archidiac. Middlesexiz.

Humfredus donavit Acad. Volumina 129. Ric. Lichefilde 100 vol.

Anno 1412. constituitur capellanus & custos Bibliothecz.

Ex Registris publicis Academiae.

Anno 1449. 24 Oct. deliberatum erat quod fieret reparatio Librariæ ex sumptibus universitatis.

1451. Supplicat venerabili Congregationi, &c. W. Farby quatenus 6 anni in Philosophia, & 2 in Theologia sufficiant ei ad effectum, quod possit intrare ad Librariam, non obstante statuto. *Hæc gratia concessa est, sub conditione quod solvat 40d.*

Eadem gratia concessa est Tho. Dando, sub conditione quod cedat magistris si eis placuerit.

1513. Electio Capellani Universitatis per Commissarium, Doctores, Magistros, & alios.

1513. Supplicat magister Adam Kirkebek Capellanus Univerf. quatenus gratiose dispensetur cum eo, ut non teneatur aperire ostia librariæ Univerf. ante horam 12 in diebus festis.

Bac. Joris
intrabant
cum habitu.

1515. Supplicat, &c. D. Tho. Nicols baccalaureus Juris, quatenus possit intrare librariam Univerf. sine habitu causa studendi. *Hæc gratia est concessa sic quod non inducat secum plures Scholares, & causa non sit ficta.*

1515. Sup. &c. D. Jo. Babham Baccalaureus facultatis Artium, quatenus possit intrare librariam Univerf. sine habitu suo. Concessa cum conditione, ut solvat 4d. ad compositionem novæ chartæ.

1555. Electi sunt quidam ad vendenda subsellia librariæ Univerf.

No X.

E Coll. nostris MSS. Vol. XLVII. p. 61.
 Copy of an Original Letter (in the Hands of
 RICHARD RAWLINSON, M. A. * of St.
 JOHN'S COLLEGE, OXFORD) relating to the
 Bells of Bristol, anno 1643.

To the Right Hon^{ble} our very good Lord the Lord
 Piercies these present at Court.

Right Hon^{ble},

UPON receipt of your lordship's letters, by which you
 make claime to the Bells of this cittie, as general of
 his majestie's Artillery, We doe humbly conceive, that yf
 any such forfeiture were incur'd (as is pretended) yet by
 agreement on his majestie's parte when his forces entered,
 it was in effect condiscended unto, that there should noe
 advantage be thereof taken, but that all things should con-
 tinue as formerlie without prejudice to any inhabitant.
 And the bells of each church being (as your lordship well
 knowes) the proper goods of the parishioners, are not at
 our disposall, neither have we to doe with them. All which
 we humbly submit to your lordship's better judgment, and
 taking our leaves do rest

Bristoll this
 xxth of Novem-
 ber 1643.

Your Honor's most humbly
 at comandment,

Humph. Hooke, Maior.

John Goringry, Alderman.

John Tomlinson, Alderman.

Rich. Long.

Wi. Jones, Alderman.

Ezekiel Wallis, Alderman.

* The degree of Dr. in the Civil Law was since conferred on him by Di-
 ploma, in a Convocation of the Univ. of Oxon, on June 12, 1719.

George

George Knight, Alderman.

John Tailer, Alderman.

John Lock, Alderman.

Henry Crefwicke.

William Colston.

No XI.

E Coll. nostris MSS. Vol. LXXXVIII. p. 42.

In MS. vet. de Officiis Osney.

Faito Agnus Dei enollentur Douce, Clement & Austin, & post missam per non magnum spacium pulsentur. Et notandum, quod semper post magnam missam pulsetur † Hautecter, ad completorium Gabriel vel Jon—

Douce, Clement, Austin, Hautecter, Gabriel, Joh, nomina campanarum Osney.

• Posius, Hautcleri.

Mr. THOMAS HEARNE at the Conclusion of his Catalogue of Books published by him, printed at the End of his Edition of *Curious Discourses*, speaks thus of **JOHN MORWEN** or **MORENUS**.

INter alios libellos rarissimos (nec fas est hoc præterire) quos pro egregia sua humanitate mihi muto dedit Thomas Rawlinsonus, Armiger, vigilantissimus peritissimusque ille supellestilis librariæ collector, nuper reperi Epitaphium Stephani Gardineri Episcopi Wyntoniensis, auctore Joanne Morrenno sive Morwenno, octo scilicet paginis constans, excusumque (in 4to.) Londini A. D. 1555. Maria regnante. Simul atque in illud incidere contigit summa cum voluptate legi. Nam antea non videram. Nec quidem unquam conspexit

conspexit Woodius noster, utcunque his in rebus diligentissimus. Adeo nimirum rarum est, ut pro gemma jure merito sit habendum. Quum vero in eodem præter alia Roperi nostri mentio fiat, non abs re fore visum est hic loci carmen integrum inserere, præmissa etiam narratione quam de Morrenno literis mandavit & in lucem publicam edidit Woodius.

ATHENÆ OXON.

Vol. I. col. 67.

JOHN MORWEN, or *Morenus* as he writes himself, was a *Devonian* born, admitted Scholar of *Corp. Chr. Coll.* 23 Feb. 1535. and afterwards Fellow, and Master of Arts, About which time entering into holy Orders, he became noted soon after for his profoundness in Divinity, and his great knowledge in the Greek tongue, being in the latter end of king Henry 8. Reader thereof in his College, and a private instructor of *John Jewell*, though afterwards a hater of his Opinions. In 1551. he was admitted Bach. of Divin. and about the same time studied Physick, as having no good wishes for reformation, which tended to the ruin (as he thought) of the Church. He is stiled by a learned * author, not of his opinion, to be *homo Grace doctus, sed idem Græcorum more leviculus & bibaculus*, &c. Afterwards he was patronized in his studies by Will. Roper, Esq; whose daughter, by *Margaret* his wife (daughter of Sir *Thomas More*) he instructed in the Latin and Greek tongues. He hath written several things, but whether extant, I know not. Among them are,

Epistolæ ad D. Will. Roperum.

Epitaphia diversa.

Opuscula Grace & Latine. Written with his own hand, and said † to be (though I cannot yet in all my searches find them) in the *Bodleian Library* ‡. He also translated into English several of the Greek and Latin Orations made by

* *Laur. Humph. in Vita Joh. Juelli, p. 25.*

† *Rob. Hegge in Cat. Schol. & Soc. Coll. G. G. Ox. MS.*

‡ Where I have often seen and perused them. H.

Clar. 1551. the said Daughter of *Will. Roper*, as by his Epistles it appears. What became of this *John Morwen* when queen Elizabeth came to the crown (if he lived to that time) I cannot tell, unless he was received into the family of the said *Roper*, a great lover of learning, and a reliever and comforter of distressed catholicks.

Reverendi in Christo Patris Domini Episcopi WYNTONIENSIS doctoris GARDINERI Angliæ Cancellarii Epitaphium, JOANNE MORRENNO Collegii Corporis Christi socio authore.

L O N D I N I

Ex ædibus Roberti Cayly. Mense Novembris, Anno salutis 1555.

SUME tibi pullas, & nigras, Anglia, vestes,

Occidit, heu! lumen, gloria, lausque tua.

Concidit ingenti luctu decus omne bonorum:

Concidit & virtus non revocanda præce.

Concidit & fidei turris firmissima certæ:

Sinceræ vitæ clara columba jacer.

Concidit ingenii cultum subtilis acumen:

Jamque minus Musis roboris esse puto.

Jam Charites doctæ, puræque solertia linguæ

Interiit, lacerat casta Minerva genas.

Famaque justitiæ totum celebrata per orbem

Conticuit tenebris occuluitque caput.

Vivida præcipiti perit sapientia lapsu,

Cognitio veri, juraque sacra silent.

Rebus in humanis cecidit prudentia sagax,

Consilii inventrix curia mœsta tacet.

Actio civilis dormit causæque clientum:

Pactorum custos, juris amicus abit.

Oppressis

Oppressis pereunt miseris solatia larga.
 Unica pauperibus spes quoque dempta cadit.
 Mystra sacerdotii charum plorare parentem
 Non cessat, meminit jam perlisce ducem.
 Dux gregis interiit summus, pastorque disertus,
 Martino similis moribus ingenuis.
 Gemma sacerdotum, pietas, flos, unio pulcher
 Deposuit speciem præfulsis interitu.
 Exstinctam queritur divino guttore vocem
 Plebs, ad quam fecit plurima verba plus.
 Concio demulcens, pandensque secreta sophias,
 Obstupuit, damno iussa tacere gravi.
 Hunc regina dolet, mundi hincidissima stella,
 Thesaurum credit deperiisse sibi.
 Tu quoque cognosces fidum cecidisse, Philippe,
 Suasorem fuit hic dignus amore tuo.
 Tresque simul reges lugebunt Nestora magni:
 Carolus ex imo pectore plaquet eum.
 Quid procerum memorem curas, animosque potentum?
 Ex quorum numero maximus occubuit.
 Triste quid exponam, sudans & Palladis agmen?
 Cujus in interitu steribus ora rigat.
 Quid jam servorum planctus, quos aula patroni
 Nutribat, dicam? hos iusta querela tenet.
 Jam fortuna premit spoliatos dura magistro,
 Inquirent similem, non tamen invenient.
 Hic cancellatus tractavit munia iuste,
 Officii cuius pondere nil gravius.
 Ad quem confugient viduæ suspiria crebra?
 Unde roget vires, subsidiumque petat?
 Ad quem conditio curret miseranda pupilli
 Se gemino pressum sentiet esse malo.
 Sentiet orbatum duplici se sæpe parente,
 Et qui defendat, quique reservet opes.
 Vos fratres tenui degentes stamine rerum,
 Inductos jam quos Anglia nuper habet,
 Flectere nocturno Christum qui tempore vultis,
 Amissum lachrimis plangite, flete virum.

Tuque petens panes aliena ad limina pauper,
 Concussies dentes frustula nulla vorans.
 Te sitis, atque fames, te mille pericula lædent :
 Centones laceros ferre premere tuos.
 Nocturnique gelu torpesces frigore sævo.
 Nullus erit qui te tecta subire velit.
 Nulla tibi, quæ membra tegat, clementia crescet,
 Proque cibo ventrem stringet amara lues.
 Quare agite ô Lazari, Christum pulsate gementes
 Vocibus assiduis, vultibus amnis eat.
 Nec finem facito plorandi, desine nunquam,
 Cui baculus dextræ est, pocula læva capit.
 Prosequere extractam terris oculisque Tabitham :
 Vestibus ostendas corpora tecta novis.
 Aut Petrum rogita, ut redeat, delapsus ab alto :
 Qui laxet duræ vincula rupta necis.
 Aut si non possit fieri, sed membra cubabunt
 Mortua, sub cineris strata colore novi,
 Nec calor ejectus redivivos surget in artus,
 Mortis at æternæ nox tenebrosa valet,
 Funde preces, gemitusque cie, funalia porta,
 Stetque tuo gelido plurimus ore liquor.
 Plange, Bonære, tuum Stephanum, sociumque perich,
 Carcer quos firma junxit amicitia :
 Plange tuum Jonathan, & flebile dicito carmen,
 Thesea desideras, Pirithoumque tuum.
 Deliciæ cecidere tuæ pars maxima lucis,
 Dimidium cordis scito perisse tui.
 Jamque Eboracensis summo viduatur amico.
 Tortoris clausit quem malefnada domus.
 Tu quoque non minimo luges, Ciscestria planctu,
 Cui sunt mœroris pocula plena data.
 Et qui postremo vigiles persensit iniquos,
 Jam Dunelmensis pastor amara gemit.
 His ego Whiteum formosum cidare jungam,
 Quem domini fovit cura benigna sui.
 Tu, Feckname, doles, cujus de pectore verba
 Exundant puro dulcia melle magis.

Tuque patrem affectu miro comitaris ademptum,
Viscera percussit mors inimica tua.

His etiam adnumerem Chedseum dogmate sanum,

Qui fregit Sathanæ spicula torta manu.

Hæresiarcha tuos conatus, Petre repressit,

Et falsi docuit schismatis esse caput.

Idcirco intravit Mavortia tecta referta

Sordibus, & vili carcere mansit ovans,

Hoc argumento multus pepulere nefanda

Dicere, quæ reprobatur spiritus alma domus.

Non te præteream tacitus, Watsons fidelis,

Cujus consiliis intimus exiteras.

Præ cunctis gravius patitur Wyntonia vulnus,

Quæ desolatur commoriente patre.

Illi arx cecidit, tum propugnacula pacis:

Non ita jam tuta est præside cincta bono.

Et si vera licet fari, respública murum

Præcipuum amisit, grandeque præsidium.

Perdidit & juvenis, cui dat Northfolcia nomen,

Tutorem, quo non sanctior orbe fuit.

Tu Bassatte, dole, cui tu threperia debes,

Qui dici poteras, filius, ille pater.

Transit & hic mœror reginæ ad pectora nostræ,

Quæ studio vigili diligit usque probos.

Et pater, & gnatus, duo lumina maxima mundi,

Quod cadit ingenii fida columna dolent.

Mentio scribenti raptim mihi nulla Roperi

Exstitit, at Stephani summus amicus erat,

Qui si perpeffus non est ergastula fœda,

Par reliquis animo, consociusque fuit.

Quid, Martine, tuos gemitus, lugubria verba,

Mœrores animi, tristitiamque loquar?

Hisque Copingerum ponam, quem sanguine junctum,

Mœnia cum domino continuere diu.

Sed qui cœlestes habitant, sedesque supernas,

Exsultant animam celsa videre poli.

Et gaudent, quoniam mortali corpore nexus

Exuit, & proprium terra cadaver habet.

Exsultant cives patria meliore coloni,
 Quòd Stephani venit mens preciosa Deo.
 Tu, Crispine, capis dextra, Stephanumque reduces
 Ad summi lætus splendida tecta poli.
 Ac majestatem gaudente numine trino
 Alloqueris, cujus flammea sella micat.
 Suscipe tu Stephani mentem veneranda potestas,
 Hancque sinu sistat jam patriarcha tuus.
 Dat Mormanus opes, gemmas, niveamque coronam,
 Manna sacrum nomen, fidereumque decus.
 O Stephane eximii, & custos prædivitis horti,
 Numen fac clemens propitiumque tuis:
 Vos agite ô populi ductores, cernite quantus
 Hic fuit, innocue ut duxerit usque dies,
 Hujus si sitis vestigia sancta secuti,
 Quæ sunt illius præmia vestra fient.
 Ac ne quis dubitet dictis certissima servat
 Fœdera, promittit qui sua dona bonis.

A LIST OF
Such Persons who appear to have been Members
OF THE
SOCIETY OF ANTIQUARIES
In the Reign of Queen ELIZABETH,
Together with some short Account of their Lives
and Writings.

A GARDE ARTHUR,

WHOM Mr. Camden in his annals of king James styles *Antiquariorum Insignis*, was the son of Mr. Clement Agarde of Toston in Derbyshire. He was born A. D. 1549, and educated for the practice of the Law, but quitted the same on being appointed a clerk in the Exchequer. In 1570 Sir Nicholas Throgmorton, then chamberlain of the Exchequer, appointed him one of the deputy chamberlains, which place, under many chamberlains, he held forty-five years.

His unwearied researches in the English antiquities, and a conformity of studies, brought him acquainted towards the latter part of his life with the celebrated Sir Robert Cotton, to whom he by his will bequeathed 20 volumes of valuable collections made by him relating to English history.

Besides the several discourses published in our two volumes of Curious Discourses, he wrote a treatise under the Title of *Tractatus de Usu & obscurioribus verbis Libri de Domesday*, which was preserved in the Cotton Library under Vitellius, N° ix. He likewise with great judgment and labour compiled for the ease of his successors and the benefit of the public, a book consisting of two parts; the first a catalogue of all such records as were in the four treasuries belonging to his majesty, and

and the second an account of all leagues and treaties of peace, intercourses and marriages with foreign nations, with a judicious index thereto. He had likewise the honour of discovering, that *Richardus filius Nigelli* was the author of *Dialogus de Negotiis Scaccarii*, which generally goes under the Name of *Gervasius Tilburienfis*. After giving the most ample testimonies of his great abilities in his profession, he died twenty-second of August 1615, and was buried near the door of the Chapter-house in the Cloisters of Westminster Abbey. On the wall near the place of his interment is a small defaced monument with this inscription.

Arthurus Agard, *Antiquor*,
hic prope reposit—62 annos
diligens scrutator—& *Margaretta Uxor*
ejus qui obiit—Decemb. 1615.

ANDREWS LANCELOT,

Was esteemed the most profound casuist and most eminent divine in the reigns of king James the First and king Charles the First; after having been educated first in grammar learning in the Cooper's school at Ratcliff, and then in Merchant Taylors school at London, he was chosen Fellow of Pembroke Hall in Cambridge, from whence he was some time after removed to Jesus College in Oxford, being appointed one of the first fellows founded therein by Mr. Hugh Price. Soon after he was chosen a prebendary and residentiary of St. Paul's, and prebendary of the collegiate church of Southwell in Nottinghamshire. Upon the death of Dr. Fulck he was chosen master of Pembroke Hall in Cambridge, and being appointed one of the chaplains to queen Elizabeth, she was so pleased with his preaching, that she first made him a prebendary of Westminster, and afterwards Dean of that Church. On the 3d of November 1605 he was by king James promoted to the bishoprick of Chichester, and at the same time made lord almoner to that king. In the year 1609 he was translated to the bishoprick of Ely, and soon after nominated a privy counsellor, first of England, and then of Scotland. Lastly, on the 18th day of February

February 1618 he was promoted to the bishoprick of Winchester, and deanery of the king's chapel, which two last preferments he held till his death. This great prelate, whom king James made choice of to vindicate his sovereignty against the virulent pens of his enemies, was author of several learned and elaborate works in divinity, casuistry, antiquity, and other branches of literature.

He departed this life on the 25th day of September 1626, in the 71st year of his age, and lies buried in the parish church of St. Saviour's, Southwark, under a very fair monument there erected by his executors.

BEALE ROBERT,

A learned civilian, and a zealous protestant*. The persecutions carried on by queen Mary compelled him to fly from his native country, England, to which he did not return till some time after her death: In the year 1571 he attended Sir Francis Walsingham as secretary of embassy to the French king, and in the 1576 was himself sent ambassador to the prince of Orange's court. Afterwards he became one of the clerks of the privy council, secretary of the council of York, and one of the plenipotentiaries for the treaty of peace between England and Spain. He died in the year 1601, and was buried at Allhallows, London Wall. Heylin Hist. Presb. 304.—Fuller's Ch. Hist.—Strype's Life of Archbishop Parker.—Stowe's Survey of London.—Atkin's History of Gloucestershire.—Digg's Comp. Embal.—Tanner's Bib. Britannica Hibernica, &c.

BOUCHIER HENRY.

Nothing more is known of him than that he was one of the fellows in the year 1591, and author of some of the Discourses printed in the preceding volumes.

* Author of a remarkable treatise in defence of the puritans. *A defence of the validity of the marriage of the earl of Hertford with lady Catherine Gray against the sentence given by the court of delegates; and of a discourse concerning Parisian massacre, by way of letter to the lord Bunkagh, preserved in the Cotton Library.* Titus F. iii.

BOWYER MR.

He is by some supposed to be the same with Robert Bowyer who wrote a journal of the Transactions of Parliament from the first year of king Henry VIII. to the seventh of Edward VI. but it is hardly probable that the author of that work lived so long as to the commencement of the antiquary society in the reign of queen Elizabeth.

BROUGHTON RICHARD.

Mr. Hearne takes him for the author of the *Ecclesiastical History of Great Britain from the Nativity of our Saviour unto the Conversion of the Saxons*, printed at Douay in 1633, folio; of the *Monasticon Britannicum*, printed at London in 1650, 8vo. and of some other tracts*. The inscription on his gravestone in the church of Great Strukely in Huntingdonshire, styles him *antiquariorum sui sæculi exquisitissimus*, and this perhaps induced Mr. Hearne to think that he was the same person mentioned in the lists of the members of the antiquary society; but it is scarce probable that he was so. For we learn, as well from his Epitaph, as from Wood's *Athenæ Oxon*, that he was a clergyman. Whereas Mr. Tate, who was many years secretary to the society, and knew best, assures us that the Richard Broughton, who was fellow of the antiquary society, was a student of the Inner Temple, London, and was a justice of North Wales, temp. Jac. I. In a spare leaf in Mr. Tate's manuscript collection, containing the names of some few of the members of the then society of antiquaries, he is called *Hugh* Broughton; but this list is the hand-writing of John Antis, Esq; late garter king at arms, who it may be supposed either wrote the christian name *Hugh* instead of *Richard* by mistake, or transcribed it from some other list not so authentick as that given by Mr. Tate.

* In his notes on the contents of the volume of Curious Discourses published by him.

CAMDEN WILLIAM,
The most indefatigable antiquary and historian of his time; author of the incomparable *BRITANNIA*, and many other celebrated works, well known to the learned. He was born on the 2d day of May 1551, and received his school learning, first, at Christ Hospital, afterwards at Islington, and lastly at St. Paul's School, London, from whence he was removed to Oxford, and became a servitor in Magdalen College: from thence he went to Broad-gate Hall now Pembroke College, and afterwards to Christ Church. The first public employment which he enjoyed, was that of under-master of Westminster School, to which he was promoted in 1575, and in the year 1593, he succeeded Dr. Grant as head-master of the same school; a little before which time he had the prebend of Ilfracombe in the county of Salisbury. The next preferment that he enjoyed was that of Richmond herald; and soon after his obtaining thereof he was advanced to the office of Clarenceux king at arms. He was one of the first founders of the antiquary society in the reign of queen Elizabeth, and carried on a literary correspondence with all the most learned men in Europe till his death, which happened on the 9th day of November 1623, in the 73d, as Mr. Hearne informs us, and not, as mentioned in his epitaph, in the 74th year of his age. On the 19th day of the same month his corpse, attended by the whole college of heralds, and great numbers of the nobility and gentry, was carried with great funeral pomp to Westminster Abbey, and there buried in the nave of that church. Over the place of his interment is erected a handsome monument of white marble with his effigies to the middle, and in his hand is a book with *BRITANNIA* inscribed on the leaves.

CAREW RICHARD,
Of East Anthony, in the county of Cornwall, Esq. After spending three years at Christ Church in Oxford, he was entered of the Middle Temple London, where he continued three years more, applying himself with great diligence to the study of history and antiquities. In 1577 he married Juliana Arundel of Trerice, and retired into Cornwall; of

which county he was in 1581 appointed a justice of the peace. In 1586 he was high sheriff of the same county, and in 1599 was one of the deputy lieutenants thereof, treasurer of the lieutenancy, and colonel of a regiment of 500 men appointed for Causam Bay. In 1589 he was elected a member of the college of Antiquaries, and obtained great reputation by the learned oration which he made upon his admission into that society. About that time he made an historical survey of his native county of Cornwall, which he published in the year 1602, in quarto, dedicating it to his friend Sir Walter Raleigh, then lord Warden of the Staunaries, &c. The learned Mr. Camden, in the 6th edition of his *Britannia*, mentions this work with the highest encomiums, and acknowledges that our author *had been his chief guide through the county of Cornwall*. The publick is likewise indebted to Mr. Carew's pen for a work, intituled, *The true and ready Way to learn the Latin Tongue, &c.* London 1654, 4to. for a Translation in English of a work, intituled, *The Examination of Mens Wits*, Lond. 1594 and 1604, in 4to. written originally in Spanish by John Huarte, and for an *Epistle concerning the excellency of the English Tongue*, printed at the end of the second edition of his *Survey of Cornwall*, London 1723, quarto. Anthony Wood assures us that our author was accounted a religious and ingenious man, learned, eloquent, liberal, stout, honest, and well-skilled in several languages. He was intimate with the most noted scholars of his time, particularly with Sir Henry Spelman, who extols his ingenuity, virtue, and learning: and a famous Scotch poet styles him *another Livy, another Maro, another Papinian*, and highly extols him for his great skill in history and knowledge in the laws. He died on the sixth of November 1620, and was buried amongst his ancestors in the church of East Anthony. Shortly after he had a splendid monument set over his grave with a Latin inscription written thereon.

CLIFFE MR.

We have no memoirs relating to this gentleman.

COMPTON

COMPTON WILLIAM LORD,

Eldest son and heir of Henry baron Compton of Compton Vineyats in com. War. He was summoned to parliament in the 35th year of queen Elizabeth, and was one of her privy council. On the fifth of January 1604, he was made knight of the Bath at the creation of Charles duke of York; and on the 30th of August 1605 created a Master of Arts in the University of Oxford, the king being then present. Some years after he was constituted president of the council for the marches of Wales, and lord lieutenant of the counties of Worcester, Hereford, Salop, and Warwick. On the second of August 1618 he was advanced to the title of earl of Northampton; and on the 21st of April 1629 he was installed knight of the garter. He died on the 24th day of June 1630, and was buried with his ancestors in the church at Compton Vineyats aforesaid.

COPE SIR WALTER.

Mr. Stow in his survey of London styles this gentleman his worshipful friend. But history hath not preserved any further account of him.

COTTON SIR ROBERT.

He received his academical education at Trinity College in Cambridge, from whence he removed to London, where he was admitted into the college of antiquaries, and prosecuted his studies with the utmost alacrity and uncommon success. When he was no more then eighteen years of age he began to gather together that amazing collection of the most choice and ancient records, charters, and other manuscripts which now form the Cottonian Library. In the year 1600 he wrote *A brief abstract of the question of precedency between England and Spain*, which was occasioned by queen Elizabeth's desiring the thoughts of the antiquarian society on that point, upon her sending Sir Henry Nevil ambassador to Boulogne to treat of a peace with arch-duke Albert. On the accession of king James the First Mr. Cotton received the order of knighthood, and was so much esteemed

on account of his consummate knowledge in history and antiquities, that during this whole reign he was consulted as an oracle by the privy counsellors and greatest men in the kingdom, upon every difficult point relating to the constitution. He composed, by the king's express order, *An answer to such motives as were offered by certain military men to prince Henry, to incite him to affect arms more than peace.* By order of the same monarch he also made *Collections relating to the revenue of the crown, and the manner and means how the kings of England have from time to time supported and repaired their estates.* The king employed him also to write *Animadversions upon Buchanan's and Thuanus's Accounts of the behaviour and actions of Mary queen of Scots,* and to give a different turn to them from what had been done by those two famous historians; and to examine whether, by the laws of the land, papists ought to be put to death or imprisoned. On this latter occasion he wrote *Twenty-four Arguments, whether it be more expedient to suppress popish practices against the due allegiance of his majesty, by the strict executions touching Jesuits and seminary priests; or to restrain them to close prisons during life, if no reformation follows?* As also *Considerations for the repressing of the increase of priests, jesuits, and recusants without drawing of blood.* When the Spanish match was in agitation, he was employed by the House of Commons to show, by a short examination of the treaties between England and the house of Austria, the unfaithfulness and insincerity of the latter, and to prove that in all their transactions they aimed at nothing but universal monarchy. He likewise at the request of his friends, as well as for his own private amusement, wrote several books and tracts, some of which are printed, and others still remain in manuscript. He also made great collections for *The History and Antiquities of Huntingdonshire,* and for completing the noble design which he had formed to write *An Account of the State of Christianity in these Islands, from its first Reception here to the Reformation.* When the order of Barons was created by king James the First, he was chosen to be

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one, in consideration of the great services which he had rendered to that king. Nor was this all, for king James was frequently wont to do him the honour of calling him *cousin*, the reason of which was this, William Cotton of Cotton, in the county Palatine of Chester, from whom Sir Robert was lineally descended, married Agnes daughter and heir of Walter de Redware of the county of Stafford. His son John in the 12th year of king Henry the Fourth, married Isabella daughter and heir of William Falconer of Thurcaston, in the county of Leicester. They had issue Richard, who married Elizabeth sister and coheir of Sir Hugh Venables, knight; and a second son William, who married Mary daughter and heir of Robert Wisenham, Esq; and being slain at the battle of St. Albans, 23 May 1455, left an only son and heir named Thomas, who was great grandfather to Sir Robert Cotton. Mary just now mentioned was grand-daughter of Agnes daughter and heir of John Brus or Bruce of Connington and Exton, Esq; and brought the Connington estate into the Cotton family. This John Brus was lineally descended from Bernard, second son of Robert Brus, lord of Annandale in Scotland, and Isabella daughter and coheir of David the second Earl of Huntingdon. From this Robert and Isabella was the royal family of Scotland descended; and by this means the Cotton family came to be related to the Kings of Scotland. On this account likewise it was that Sir Robert used frequently to write his own name, *Robert Cotton Bruce*. This great and worthy man, respected and esteemed both at home and abroad, who was the generous patron of all lovers of antiquity, and who had done incredible service to learning, by the immense and inestimable library of manuscripts collected by him, which, as well as his house, was always open to ingenious persons, and which he secured for the public use and service of posterity. He departed this life on the sixth day of May 1631, and was buried in the south chancel of his own parish church of Connington, in the county of Huntingdon.

DAVIES.

DAVIES SIR JOHN.

He had his academical learning in Queen's College in Oxford, from whence he removed to the Middle Temple, London; where he was called to the bar, and practised the law; and became a burgess in the parliament held at Westminster in the year 1601. He was at that time esteemed an excellent poet, as well as an eminent lawyer, having published several pieces which were in high repute, particularly his poem on *The Original Nature and Immortality of the Soul*, dedicated to queen Elizabeth; and which Anthony Wood intitles *Nosce Teipsum*. On the death of queen Elizabeth, he was one of those who accompanied lord Hunsdon into Scotland to congratulate king James. On their being introduced into his majesty's presence, king James enquired of lord Hunsdon the names of his attendants; and his lordship naming among them John Davies, the king asked whether he was *Nosce Teipsum*? and being answered he was, he graciously embraced him, and assured him of his favour. On that monarch's arrival in England he made him first his solicitor, and then his attorney general in Ireland, where in 1606 he became speaker of the House of Commons of that kingdom. In the year following he received the honour of knighthood, and in 1612 was made one of his majesty's serjeants at law, and was afterwards often appointed one of the judges of assize on the circuits. In 1616 he was appointed lord chief justice of the King's Bench, and on the seventh of December he died suddenly of an apoplexy at his house in the Strand, and was buried in the church of St. Martin in the Fields, within the liberty of the city of Westminster. Besides the poem above-mentioned he published the following works:

1. *A Discovery of the true Causes why Ireland was never entirely subdued, nor brought under obedience of the Crown of England, until the beginning of his majesty's happy reign*, London 1612, 4to.
2. *A Declaration of our Sovereign Lord the King, concerning the title of his Majesty's son Charles, the Prince and Duke of Cornwall*, London 1614.
3. *Le Premier Report des Casés & Matters en Ley resolves & adjudges en les Courts del Roy en Ireland*, Dublin 1615.

England's

England's Independency upon the Papal Power, historically and judicially stated by Sir John Davies, Attorney General in Ireland, and by Sir Edward Coke, Lord Chief Justice of England, in two Reports, selected from their great volumes, with a preface written by Sir John Pettus, London 1674.

4. A perfect Abridgment of the Eleven Books of Reports of Sir Edward Coke, London 1651, 12mo. 5. *Jus imponendi Vestigalia*, or, the Learning touching Customs, Tonnage, Poundage, and Impositions on Merchandizes, &c. asserted, London 1656 and 1659, 8vo. A large Epistle to Robert Earl of Salisbury of the state of the counties of Monaghan, Fennanagh, and Downe, and of Justices of Peace, and other officers of Ireland; 1607. Also a Speech before Arthur Lord Chichester, Viscount Belfast, Lord Lieutenant of Ireland. Hymns of *Astrea* in acrostic Verse. *Orchestra*, a poem expressing the antiquity and excellency of dancing, in a dialogue between Penelope and one of her woors. Also a Collection of Epigrams, and a Metaphrase of several of king David's Psalms, which last was never published.

DETHICK SIR WILLIAM.

He was the second son of Sir Gilbert Dethick, knight, the seventh Garter king at arms, and born 1542. In the ninth year of queen Elizabeth he was made Rouge Croix, and three years after York herald. In 1586 he succeeded his father as garter king at arms, being esteemed the most skilful herald of his time, and is said to have surpassed as much in abilities as in station all his cotemporary officers at arms. Camden in his *Britannia* styles him, *Omnium que ad honorem & nobilitatis rationem spectant studiosissimus*. Previous to the coronation of king James the First he received the honour of knighthood, and in 1606 surrendered the office of Garter in favour of his successor Sir William Segar. He survived this surrender about six years, and dying in 1612, at the age of 70 years, was buried in the cathedral church of St. Paul, London. He was one of the first members of the society of antiquaries, and permitted them

Members of the Society of Antiquaries

them to hold their several meetings at his apartments in the herald's office*.

DODDERIDGE SIR JOHN.

He was born, A. D. 1555, at Barnstable, in the county of Devon, where his father Richard Dodderidge was an eminent merchant. In the year 1572 he was entered of Exeter College in Oxford, and four years after removed to the Middle Temple, London, where he became a great proficient in the law, and a noted counsellor. In the 45th year of queen Elizabeth he was Lent reader of that house, and on the 28th of January 1623, called to the degree of serjeant at law, and had the honour of being appointed prince Henry's serjeant. From this employment he was soon after raised to that of solicitor-general to the king. On the 23th of January 1607, he was constituted the king's principal serjeant at law, and was knighted on the 15th day of July following. In 1612 he was by the vice-chancellor, both the proctors, and five others of the university of Oxford, at his chambers in Serjeant's Inn, created master of arts, and a few days after was by his majesty appointed one of the judges of the King's Bench, in which office he continued till his death, which happened on the 13th day of September 1628, and in the 73d year of his age. He lies buried under a fair large stone in the ambulatory before the door of the library formerly called the lady Mary's chapel, in the cathedral church of Exeter. Within the aforesaid library is a very sumptuous monument erected to his memory, containing his figure and that of his wife cut in alabaster under a stately arch supported by marble pillars. This learned judge, by his happy education, forwarded with excellent natural parts and continual industry, became so general a scholar, that it was justly said of him, *that it was hard to say whether he was a better artist, divine, civil, or common lawyer*; among his other studies he was a great lover and searcher after antiquities, and became so eminent for his

* Lives of the heralds, a MS. in the library of Sir Joseph Ayloffe, Bart.

skill and knowledge therein, that he was looked upon as one of the ablest members of the then college of antiquaries. The * following works were written by him. 1. *The Lawyer's Light, or due Direction for the Study of the Law*, London, 1629, 4to. 2. *A Compleat Parson, or a Description of Advowsons and Church Livings, delivered in several Readings, in an Inn of Chancery called New Inn*. Printed 1602, 1603, 1630, 4to. 3. *The History of the Ancient and Modern Estate of the Principality of Wales, Duchy of Cornwall, and Earldom of Chester*, 1630, 4to. 4. *The English Lawyer; a Treatise describing a Method for the Managing of the Laws of this Land, and expressing the best Qualities requisite in the Student, Practiser, Judges, &c.* Lond. 1631, 4to. 5. *Opinion touching the Antiquity, Power, Order, State, Manner, Persons, and Proceedings of the High Courts of Parliament in England*, Lond. 1658, 8vo. 6. *A Treatise of particular Estates*, Lond. 1677, 12mo, printed at the end of the fourth edition of William Noy's book called *The Grounds and Maxims of the Law*. 7. *A true Representation of forepassed Parliaments to the View of the present Times and Posterity*, still remaining in manuscript. He also enlarged a book, intituled, *The Magazine of Honour*, Lond. 1642, which was afterwards published under his name by the title of *The Law of Nobility and Peerage*, Lond. 1657, 1658, 8vo.

DOYLEY.

In the Autograph of one of the discourses printed in these volumes, he is stiled Mr. and in another Doctor. Mr. Tate's manuscript before-mentioned calls him doctor of civil laws. But nothing more can be said with certainty about him. Anthony Wood in the *Athenæ Oxon.* vol. I. p. 320. mentions two learned men of the name of Doyley, who flourished at the close of the 16th century. The one was Thomas Doyley, Esq; who was steward to archbishop Parker, and the other was Dr. Thomas Doyley, who was

* Prince's Worthies of Devonshire, p. 249. *Athenæ Oxon.* Vol. i.

bred at Magdalen College in Oxford, and after having taken the degree of doctor of physick in the university at Basil, settled in London, became one of the college of physicians, and was frequented for his successful practice in his faculty.

ERDESWICKE SAMPSON, Esq.

He was born at Sandon in Staffordshire, and had his academical education in Brasen Nose College, Oxford, from whence he retired to his patrimony at Sandon. He was so perfectly versed in history and antiquities, that he was usually called the *Staffordshire Antiquary*. And Mr. Camden in his *Britannia* describes him as *antiquitatis cultor maximus*. The learned world is indebted to him for writing a *Survey of Staffordshire*, and a description of *Beefton Castle*, which after his death were first published from the author's original copy, by Sir Simon Degge, Knt. Lond. 1717, 8vo. and afterwards reprinted in 1723, 8vo. As also for a book intituled, *The true Use of Armory*, which in the year 1592 was published under the name of William Wyrley, who was for some years entertained in his family at Sandon. He died on the 11th of April 1603, and was buried in the parish church of Sandon aforesaid, under a monument of free-stone with his figure thereon, erected by him in his life-time.

FLEETWOOD WILLIAM, Esq.

Of Pedworth in the county of Lancaster, studied the law in the Middle Temple, and became recorder of London, after which he was admitted a member of the college of antiquaries, and became a constant attendant, and a zealous promoter thereof. He died in the year 1604, and was buried at Great Missenden in Buckinghamshire. The books he wrote are, *Elenchus annalium Regum Edwardi V. Ricardi III. Henrici VII & VIII*. Lond. 1572. 1712. *The Officer of a Justice of Peace*, Lond. 1658. *Tables to Plowden's Reports* 1599, fol. *An Oration made in the Guildhall before the Lord Mayor, &c. concerning the late Attempts of the Queen's Majesty's evil seditious Subjects on the 15th of*
October

October 1571, Lond. 12mo. *Carmen latinum in Laudem Tho. Chaloner de Republ. Angl.* 1579. And *Observationes in Lambarti archion, &c. de Poultreys Compter*, London, still remaining in manuscript.

HAKEWILL WILLIAM,

Brother of Dr. George Hakewill, author of the *Apology*, &c. was son of Mr. John Hakewill a merchant, and born in the parish of St. Mary Arches in the city of Exeter, where his father resided. He had his academical learning at Exeter College in Oxford, but designing to make the common law his study and profession, he entered himself of Lincoln's Inn, London, where in the year 1624 he was chosen Lent reader of that house, and was one of the benchers thereof, as *Sir William Dugdale in his Origines Juridicales informs us*, from 1619 to 1648. During that time he served in divers parliaments, and by order of the house of commons in the year 1641, printed in 8vo. a book written by him many years before, intituled; *The Manner how Statutes are enacted in Parliament by passing of Bills*; to which he annexed *A Catalogue of the Speaker's Names from Petrus de Montfort, anno 44 Hen. R. 3. down to William Lenthall*, chosen anno 16 Car. I. He was one of the executors of Sir Thomas Bodley, and at the time of the funeral of that eminent person was honoured by the university of Oxford with the degree of master of arts. He died in the 80th year of his age.

HARTWELL ABRAHAM.

He was the last person admitted into the college of antiquaries before their dissolution, and is supposed to be the same person, who in the year 1565 translated into English from the Latin, a book intituled, *A Sight of the Portugal Pearl, in answer to the Epistle of Hieron Orosius, intituled, A Pearl for a Prince.*

HENEAGE MICHAEL.

He was keeper of the records in the Tower of London.

HOLLAND JOSEPH.

He was born in the county of Devon, and was educated in the study of the common law in one of the Temples, London. He was an excellent herald, genealogist, and antiquary, as appears by many of his writings now preserved in the library of the college of arms in London. Among them are *A collection of the names and arms of the nobility and gentry who lived in the county of Devon in and before the year 1585.*

LAMBARDE WILLIAM.

He was the fourth son of John Lambard, alderman and sheriff of London, a gentleman of a Kentish family, and was brought up to the study of the law in Lincoln's Inn, under the tuition of the celebrated antiquary Mr. Laurence Nowell, where he made a considerable figure in his profession, and was esteemed one of the most learned antiquaries of his time; on which account he was in the year 1590 promoted to a considerable place in the alienation office; and on the 21st of January 1601 was appointed keeper of the records in the Tower of London. In the year 1607 he founded an hospital at Greenwich in the county of Kent, and died about the 1601. He was author of *A Perambulation of the County of Kent.* London, printed 1576, 1596, and 1620, 4to. *Eirenarcha, or The Office of Justice of Peace,* Lond. 1581, 4to. &c. *The Duties and Office of Constables, Burgholders, Tithingmen, Church-ministers, Church-wardens,* &c. 1582. 1594, 12mo. &c. *Archion, or A Comment on the High Courts of Justice in England,* 1624, 8vo. *Αρχαιονομία,* &c. Lond. 1568, 4to. And of *A posthumous alphabetical Description of England,* printed 1730, 4to. He also compiled the work which was printed by Mr. Pryune under the title of *Cotton's Abridgement of the Records in the Tower of London,* and wrote some other pieces still remaining in manuscript.

LAKE SIR THOMAS.

He was born at Southampton, and became an amanuensis to Sir Francis Walsingham, secretary of state, who recommended him to queen Elizabeth to read to her French and

and Latin. A little before her death she appointed him clerk of her signet, and her successor king James knighted him, and appointed him a privy counsellor, and one of his principal secretaries of state. He is mentioned as one of the benefactors to St. John's College in Oxford.

LEIGH SIR FRANCIS.

He was a knight of the Bath, and an intimate acquaintance of the learned Camden, who by his will gave him a handsome legacy.

LEY SIR JAMES,

Sixth son of Henry Ley of Telford Elias in Wiltshire. After his removal from Brazen Nose College in Oxford, where he received his academic education, he became a student of the law in Lincoln's Inn, and being called to the bench there in the 22d year of queen Elizabeth, was in her 44th year chosen Lent reader. In the following reign he was raised to sundry honours and employments; in 1 Jac. I. he was called to the degree of serjeant at law, and in the year following constituted chief justice of the *King's Bench in Ireland*. In 6th of James, being then a knight, he was made king's attorney in the court of wards and livery in England. On the 20th July, 17th of James, he was created a baronet, and on the 29th of January in the following year he was constituted chief justice of the court of *King's Bench in England*, and counsellor of state; And eleven days after advanced to the dignity of a baron of this realm, by the title of lord Ley of Ley in the county of Devon. King Charles the First on the 5th of February in the first year of his reign advanced him to the title of earl of Marlborough, and soon after appointed him lord president of the council. Wood in *Athena Oxon.* says, he was a person of great gravity, ability, and integrity, and the same in all conditions. He married three wives, first, Mary daughter of John Petty of Stoke Falmage, in the county of Oxford, Esq; secondly, Mary widow of Sir William Bower, knt. and lastly, Jane daughter of John lord Boteler, and dying on
the

the 14th day of march in the year 1628, lies buried in the parish church of Westbury, under the plane, in the county of Wilts, under a magnificent monument erected to his memory by his eldest son Henry, who succeeded him in his title and honours. Exclusive of several discourses printed in these volumes, he was author of a collection of reports of divers cases in law, tried in the time of king James, and in some part of the reign of king Charles the First, which were printed in the year 1659, fol. Of a treatise of Wards and Liveries, printed in 1642, 8vo. and of some law tracts, which are likewise printed. He also collected, with an intention to publish, *The Annals of John Glynne, a Frier Minor of Kilkenny* (who lived in the time of king Edward the Third). *The Annals of the Priory of St. John the Evangelist of Kilkenny*. *The Annals of Multiferriar, Rosse, and Clonmell, &c.* and some other of the historical writers of Ireland.

OLDSWORTH MICHAEL.

He was sometime a fellow of Magdalen College, and afterwards became secretary to Philip earl of Pembroke, by whose recommendation he was several times elected a burgess to serve in parliament for Old and New Sarum, and living till the grand rebellion, was appointed keeper of Windsor Park, and one of the two masters of the prerogative office.

PATTEN or PATON WILLIAM.

He is supposed by bishop Tanner in his Bibl. Brit. to have been rector of St. Mary Hill, London. He wrote *The Expedition into Scotland of the most woorthely fortunate Prince*, printed 1548, 12mo. And of *A Calendar of the Scripture, wherein the Hebrew, Chaldean, Arabian, Phœnician, Syrian, Persian, Greek, and Latin Names of Nations, Countries, Men, Women, Idols, Cities, Hills, Rivers, and other places in the Bible mentioned by order of letters are set down and turned into English*, 1575, 4to.

SAVEL

SAVEL or SAVILE MR.

It is uncertain who this gentleman was. All that is now known of him is, that he was a student in the Middle Temple, London; from whence it may be inferred, that the person here mentioned was not the learned Sir Henry Savile of Over Bradley in Yorkshire, or his young brother Thomas, or the kinsman of Sir Henry Savile, who was usually called Long Henry Savile.

SPELMAN SIR HENRY,

Of Congham in the county of Norfolk, kn^t. was born in 1562, and educated in school learning at Walsingham in the same county, from whence he removed to Trinity College, Cambridge. At the age of 18 years he was entered of Lincoln's Inn, with a design of studying the law, but disliking the drudgery necessary for attaining to the lucrative part of that profession, he applied himself to the investigation of the history and antiquities of his native country, and the acquiring a perfect knowledge of its excellent constitution. In 1593 he was admitted a member of the society of antiquaries, which brought him acquainted with the most eminent men in England for that kind of literature, and in the year following wrote *A Discourse concerning the Gain of the Kingdom*, particularly to show what great treasures were exhausted from England, by the usurping tyranny of the Roman pontiffs. In 1604 he was appointed High Sheriff of Norfolk, and wrote the description of that county, which was printed by John Speed in 1606. In the year 1607 king James the First made him one of the commissioners for determining the unsettled titles to lands and manors in Ireland, which trust he discharged with the greatest reputation. In 1612, when he was 50 years of age, he quitted all publick employments, and settled in London with a full resolution of pursuing that useful and important subject which he had made the object of his choice, viz. *The grounds of the law from original records*. In 1613 he published his elaborate treatise intituled, *De non temerandis Ecclesiis*, which he reprinted in 1615, 8vo. and soon after wrote *An Apology for the same*, and a *Latin epistle*

to Mr. Richard Carew, who had expressed his dissatisfaction at some particulars in that piece. In 1626 he published his glossary under the title of *Archaeologus*, &c. and the year following wrote his treatise *de Sepultura*, or of *Burial Fees*, being at that time one of the commissioners appointed for enquiring into the oppression of exacted fees. About this time he set about the making collections for a history of the English councils, which he branched into three parts. The first volume containing *The History from the first Plantation of Christianity, to the Coming in of William the Conqueror* in 1066, was published by him in 1639. Some mistakes which were attributed to his glossary under the word *Feudum*, occasioned his writing and publication of a piece intitled, *The Original Growth, Propagation, and Condition of Tenures by Knight Services in England*. At length this great man, worn out with study and years, being upwards of fourscore years old, departed this life in the year 1641, at the house of his son-in-law, Sir Ralph Whitfield, in Barbican. From this place his corps was carried with great solemnity by order of king Charles to Westminster Abbey, where it was interred in the South Isle, near the door of St. Nicholas Chapel, at the foot of the pillar opposite to the monument of his ancient friend Mr. Camden. Upon his death his papers fell into the hands of his eldest son Sir John Spelman, and afterwards into those of Sir Ralph Whitfield, many of which have been since published.

STOW JOHN.

He was born in the parish of St. Michael's, Cornhill, London, and bred to the trade of a Merchant Taylor, which he quitted in the early parts of his life, in order to indulge his favourite study, the history and antiquities of England, in which he was greatly encouraged by the benefactions of his patron, Dr. Matthew Parker, archbishop of Canterbury, William Lambard, Esq; author of the perambulation of Kent, &c. Robert Bowyer, Esq; keeper of the records in the Tower, the learned Mr. Camden, Dr. David Powell, author of the history of Wales, and divers other eminent persons of his time. His fellow citizens appointed him

him the *city's chronicler*, which place he enjoyed till his death, which happened on the 5th day of April 1605, and in the 80th year of his age. He was buried in the parish church of St. Andrew Undershaft in London, where his widow erected a decent monument to his memory. The publick is indebted to him for his curious and valuable *Survey of London*, which was first published by him in the year 1598, and afterwards in the year 1603. He spent above 40 years of his life in collecting out of some hundreds of ancient authors, registers, chronicles, &c. materials for a history of England, on the publication of which he set his heart: but he lived only to publish an abstract of it under the title of *Flores Historiarum*, or *Annals of England*, which was first printed in 1600, in a thick quarto in black letter, and dedicated to archbishop Whitgift. From his papers Edmond Howes afterwards published that folio volume which goes under the name of *Stowe's Chronicle*. This indefatigable writer had a great hand in the improvements made to the second edition of Hollingshed's Chronicle, printed in 1587. He likewise corrected the edition of Geoffrey Chaucer's poems, published in the year 1561, and furnished Mr. Spight with several learned historical notes for his edition of that ancient bard, printed in 1597.

STRANGEMAN JAMES,

The laborious compiler of a volume of judicious collections relating to the history and antiquities of Essex, and of another volume relating to the monasteries of England, which latter is now in the Cotton library.

TALBOT THOMAS,

Commonly called *Limping Talbot*, from a lameness in one of his legs, was the son of John Talbot of Salebury in Lancashire, and promoted to the clerkship of the Records in the Tower of London. He assisted Mr. Camden (who styles him an excellent antiquary) in compiling the succession of the earls of each county since the Norman conquest, as he did Mr. Abington in his History of the bishops of

Worcester. Sundry of his collections relating to English antiquities are in the Cotton library, and others in that of the College of arms. He was living in the year 1580, but how many years longer he survived, is uncertain.

THYNNE FRANCIS,

Was lineally descended from Ralph de Botville of Stratton in Shropshire, whose eldest son being nick-named *Thom at the Inne*, his descendants afterwards assumed the name of Thynne. He was the son and heir of William Thynne of in the county of Kent, Esq; master of the household to king Henry the Eighth, and had his first education in Tunbridge-school in Kent, under the learned Mr. John Proctor the master thereof, who is gratefully remembered by him as one of the English historians; from thence he was sent to Magdalen College in Oxford, where he was entered a commoner; and, as himself informs us, was afterwards a member of Lincoln's-inn. Mr. Camden, a good judge of men, in his *Britannia*, and in his preface thereunto, gives him the ample character of having prosecuted the study of antiquities with great honour, styling him an admirable antiquary, and adding, that he had with the greatest judgment and diligence long studied the antiquities of this kingdom. The first preferment that he obtained was that of *Blanche Lyon* pour-fuivant, after which, when he was fifty-seven years of age, he was on the 22d of April 1602, with great ceremony created Lancaster herald at arms, having previously obtained a patent for that office dated the 23d October, 44 Eliz. Mr. Wood in his *Athenæ Oxon.* vol. i. p. 376, who is copied by Mr. Hearne, places the death of this laborious antiquary in the year 1611, but it must have happened sooner, since he never surrendered his patent, and that granted to his successor in office bears date in November 1608. Mr. Thomas Hearne in the table of contents to his edition of *Curious Discourses*, speaking of Mr. Thynne, says, that he is "famous for being one of those who

continued

“ continued Ralph Hollingshed's Chronicle, though all the
“ things that he was author of in that continuation are not
“ commonly known, and for that reason not noted in Athenæ
“ Oxon. the compiler whereof was ignorant that a great
“ many sheets (beginning in p. 1419, and ending in p. 1575)
“ were castrated or suppressed, because several things in them
“ gave offence. These castrated sheets are now so very
“ scarce, that I could never yet meet but with two copies of
“ Hollingshed with them, though I hear of several others.
“ Those two copies that I have seen were lent me by two
“ learned friends, to whom I am also obliged upon many other
“ accounts. I find by them that four discourses of our author
“ Thynne were suppressed, viz. 1. A Discourse of the earls
“ of Leicester by Succession; which discourse is thus intitled
“ in the margin, The Collection of the Earls of Leicester,
“ by Francis Thynne, 1585. 2. The Lives of the Arch-
“ bishops of Canterbury, written by Francis Thynne, in the
“ year of our redemption 1586, which is the year in which
“ this chronicle came out, and in which Robert Sutton alias
“ Dudley earl of Leicester (of whose entertainment in the Low
“ Countreys there is a large and invidious account, said to be
“ written by John Stow) fell into disgrace. 3. A Treatise
“ of the Lord Cobhams. 4. The Catalogue of the Lord
“ Wardens of the Cinque Ports, and Constables of Dover
“ Castle, as well in the time of King Edward, surnamed the
“ Confessor, as since the reign of the Conqueror. Both
“ these were gathered, as well out of ancient records and
“ monuments, as out of our histories of England, in the year
“ 1586. But whereas it is insinuated in The English Historical
“ Library, that there are no more sheets suppressed than what
“ relate to the lords Cobham, and that this was occasioned be-
“ cause of the then lord Cobham being in disgrace, I must
“ beg leave to assert, that this is one of the great number of
“ mistakes in that work, it being plain from what hath
“ been already said, that there were many sheets besides sup-
“ pressed; and it being withal as plain from our English
“ history, that the Lord Cobham was at that time in fa-
“ vour and not in disgrace with queen Elizabeth.” This

other works are, *The Annals of Scotland*, in some part continued from the time in which Ralph Hollingshed left off, being anno 1571, unto the year 1586, London 1586, fol. There are also *Catalogues of the Protectors, Governors, or Regents of Scotland during the King's Minority, or during the Minority of several Kings for their insufficiency for Government*; as likewise *Catalogues of all the Dukes of Scotland by Creation or Descent, of the Chancellors of Scotland, Archbishops of St. Andrews, and divers Writers of Scotland*. A *Catalogue of English Cardinals* set down in Hollingshed's Chronicle at the end of queen Mary, which was used and followed by Francis bishop of Landaff in his catalogue or history of them at the end of his book, *De præsulibus Anglia Com.* A *Catalogue of the Lord Chancellors of England*, by the help whereof John Philpot, Somerset herald, framed his *Catalogue of the Chancellors of England*, printed at London 1636, 4to. *The perfect Ambassador, treating of the Antiquity, Priviledges, and Behaviour of men belonging to that Function, &c.* dedicated by him to his good Lord, William lord Cobham, and long after his death printed at London 1651, 12mo. *A Discourse of Arms*, written to Sir William Cecil lord Burghley, and dated from Clerkenwell Green, 5th January 1593; the original manuscript of which is now in the College of arms, London. *Miscellanies of the Treasury*, written to Thomas lord Buckhurst, anno 1599, with the history of the lives of some of the lord treasurers; which work he left imperfect by reason of his disappointment in not supplying one of the then vacancies in the College of arms. *Matters concerning Heralds and Trial of Arms and the Court Military*. *A Discourse of the Duty and Office of an Herald at Arms*, and other discourses on subjects of English antiquities printed in these volumes. *A Discourse upon the Philosopher's Arms*, written in English verse 1583. *Epitaphia five Monumenta Sepulchrorum. Anglice & Latine quam Gallice. Collections out of Domus Regni Anglia—Nomina Episcoporum in Somerset—Nomina Saxonica de donationibus a Regibus Eadfrido, Eadgare, & Edwardo—Catalogus Episcoporum Baton & Wells*

—*A Book of Collections, and Commentaries de Historia & rebus Britannicis.*—*The Plea between the Advocate and Anti-advocate, concerning the Bath and Batchelor Knights,* wherein are shewn many antiquities touching knighthood, written in the year 1605, and much used by the late Mr. Anstis in the Account which he published of the institution of the order of the Bath.

Collections out of manuscript Historians, Registers of Abbies, Ledger Books, and other ancient Manuscripts, 4 vols. folio. Besides these he wrote several notes on, and corrections of Chaucer's works, which he intended to have published as an addition to the edition of that author, made by his father when he was clerk of the kitchen to king Henry the Eighth: but these, as also considerable materials for the writing Chaucer's life, he gave to his friend Mr. Thomas Spight of Cambridge, who made great use of them in the second edition of Chaucer's works, which he printed in 1602.

His original history of Dover Castle and the Cinque Ports, was, as bishop Nicholson informs us, in the library of Dr. More bishop of Ely.

WHITLOCK SIR JAMES.

He was born at London in the year 1570, and educated in Merchant Taylors school, from whence in the year 1588 he was elected a scholar of St. John's College, Oxford; he afterwards settled in the Middle Temple, London, and was Summer reader of that house in the 17th year of king James the First. In 1620 he was knighted, and elected one of the burgesses in Parliament for Woodstock: after which he was successively Chief Justice at Chester, one of the Justices of the Common Pleas, and one of the Justices of the King's Bench. He was perfectly skilled in the Latin, Greek, and Hebrew, an excellent genealogist, perfectly versed in the Jewish history, conversant in the study of antiquity and heraldry, and was not exceeded by any in the knowledge of his own profession of the Common Law of England. He died the 26th day of June 1632, and was buried at Fawley near High Wycombe

in

in Bucks. Over his grave was afterwards erected by his son Bulstrode Whitlock, Esq; a stately monument, as also a fair chapel, which serves for the burial-place of his descendants.

His works are—*Readings* in the Middle Temple Hall, Aug. 2, 1619.—*On the Statute* 21 Hen. VIII. c. 13. now in MSS. in the Ashmolean Museum, Oxon.—*Several Speeches in Parliament*, printed in the Sovereign's Prerogative, and the Subjects Priviledges discusst, &c. in the third and fourth of King Ch. I. Lond. 1657, fol.—*A Discourse on the Antiquity, Use, and Ceremony of lawful Combats in England*, and some other discourses printed in these volumes.

His epitaph is printed in the appendix, N° I.

WISEMAN THOMAS.

He was descended of an ancient family, seated at Great Waltham in Essex, and who had large possessions there, and in other parts of that county.

WESTON ROBERT, Esq.

He was of the Middle Temple, London, where he was called to the bar, and afterwards practised the law, being esteemed an eminent counsellor.

MR. JONES,

Whose learned answers to Mr. Tate's questions are printed at p. 128 of the first volume of these discourses, does not appear to have been a member of the society of antiquaries, although he was extremely well qualified for that honour; however it may not be improper to insert in this place what Mr. Hearne says of him in his table of contents to his edition of the Collection of Curious Discourses, viz. "Perhaps he was the same with Sir William Jones, a man of British race both by father and mother (for his mother was Margaret daughter of Humph. Wynn ap Meredyth, &c. Esq;) who, after he had spent five years in Edmund Hall in this university, went to the Inns of Court, and became at length a judge, and was a person

" of

“ of admirable learning, particularly in the municipal laws,
“ and in the British antiquities, and died in the latter
“ end of the year 1640, being at least 84 years of age.
“ You may see more of him in *Athenæ Oxon.* But the com-
“ piler of that work is mistaken in saying that he was edu-
“ cated in the free-school at Beaumaris in Anglesey; that
“ school was not founded till the year 1603. It was by his
“ advice the founder proceeded, and he was one of the first
“ feoffees. The author of these answers to Mr. Tate’s
“ questions several times mentions a *Book of Laws*, which
“ himself had written, and in which many things were
“ inserted about the British antiquities. But this work, to
“ which an accurate table was added for the more ready
“ finding of any particular, was never yet printed, as I
“ think, and therefore it is no wonder that it is not men-
“ tioned by the compiler of *Athenæ Oxon.* who had not
“ met with a copy either of these answers, or of the *Book*
“ of *Laws*. If the author was not the said Sir William
“ Jones, it is probable he was not different from John
“ Jones of Gelby Lyvdy in Flintshire, Esq; a great antiquary,
“ and a curious collector of British MSS. and a constant
“ correspondent with that candid and learned antiquary
“ Robert Vaughan of Hengurt, Esq; But at present I in-
“ cline rather to the first opinion.

"of a dramatic feeling, particularly in the municipal laws
"and in the British antiquities, and died in the latter
"end of the year 1610, being at least 84 years of age.
"You may see more of him in *William's*. But the com-
"piter of that work is mistaken in saying that he was edu-
"cated in the free school at Beaumont in Angley; that
"school was not founded till the year 1603. It was by his
"order that the school was founded, and he was one of the first
"teachers. The author of *John's* answers to Mr. Fard's
"questions several times mentions a book by John, which
"he had had written, and in which many things were
"related about the British antiquities. But this work, to
"which an accurate table was added for the more ready
"finding of any particular, was never yet printed, as I
"think, and therefore it is no wonder that it is not men-
"tioned by the compiler of *William's*. *John* who had not
"more than a copy of one of these answers, or of the book
"of *John*. If the author was not the late Sir William
"Jones, it is probable he was not different from John
"Jones of *John's* family, *John's* great antiquary,
"and a curious collector of British MSS. and a constant
"correspondent with that candid and learned antiquary,
"Robert Vaughan of *Heavenly*. But at present I in-
"cline rather to the first opinion.

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